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THE CENTENNIAL HISTORY
OF THE
HARVARD LAW SCHOOL

1817-1917

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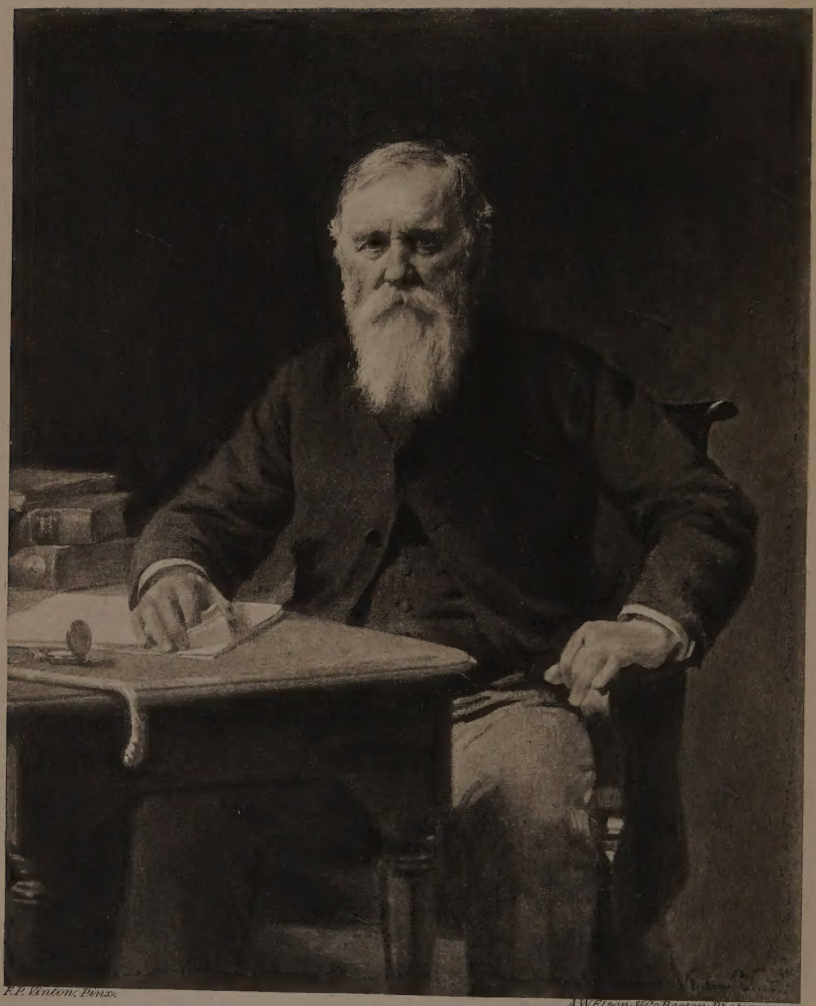

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C. C. Langdell

THE CENTENNIAL HISTORY
OF THE
HARVARD LAW SCHOOL

1817–1917

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PUBLISHED BY
THE HARVARD LAW SCHOOL ASSOCIATION
1918

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PREFACE

THE Centennial History of the Harvard Law School has been written and compiled by the Faculty, with the assistance of graduates, and published by the Harvard Law School Association. Its main purpose is to enable all of us, students of the School past and to come, to realize how others have labored and we have entered into their labors. The book will also, it is hoped, have some interest for those not connected with the School. The portions of the text indexed under such topics as Library, Instruction, Case system, Graduate work, Discussion of law, Faculty relations to the governing boards, etc., together with the various bibliographies, may prove useful to those engaged in legal education. The practising lawyer will perhaps get occasional assistance from the Bibliography of Legal Writings, while those who are considering the position of law in society may find help in portions of this same bibliography and that on Jurisprudence as well as the chapter on The Future.

Acknowledgment should be made to the John C. Winston Co., Philadelphia, for permission to use large portions of the lives of Christopher C. Langdell and James B. Thayer from Lewis' "Great American Lawyers"; to James P. Hall, the author of Mr. Thayer's life, for his work in condensing it for this book; to the Harvard Law Review, the Harvard Graduates Magazine, and the Harvard Alumni Bulletin for the use of illustrations and biographies; and to Warren's History of the Harvard

14440

Law School for frequent assistance. The quotation on page 34 is from an article by Samuel F. Batchelder in the Green Bag. The opening portion of the chapter on "The Students" was written by Julius H. Amberg, 1914, and other parts by Harvey H. Bundy, 1914, and Chauncey H. Hand, 1917. Thanks are also due to Mr. Justice Brandeis and Walter Angell, Esq., of Providence, for information about Charles S. Bradley. The chapter on the Harvard Law School Association was prepared by Frank W. Grinnell, 1896, who has also collected many of the illustrations. Permission to use the photograph of Joseph H. Choate was given by Falk, New York, the owner of the copyright. Other photographs have been obtained through the kindness of Mrs. James B. Ames, Mrs. Charles S. Bradley, Mrs. William A. Keener, Mrs. Ezra R. Thayer, and Mr. Roland Gray. The daguerreotype of Professor Parsons was lent by his daughter. The photographs at pages 120, 152, and 172 were with one exception taken by Edward G. Fischer, 1916. Mention should also be made of the services of many of the Law School secretaries in preparing manuscript and reading proof, and of the unfailing attention of the Plimpton Press, especially of its foreman, Mr. Arthur Pulsford, whose connection with the School printing runs back to the days when he carried proof to Emory Washburn.

CONTENTS

CHAPTER		PAGE
I.	History of the School	1
II.	Instruction	64
III.	The Library	86
IV.	Portraits and Prints	122
V.	The Students	128
VI.	The Harvard Law School Association	154
VII.	The Future	162

APPENDIX

I.	Lives of Harvard Law School Teachers	175
II.	The Succession to the Professorships	288
III.	Bibliography: Legal Writings by Teachers at the Harvard Law School	290
IV.	Bibliography of the Harvard Law School	344
V.	Bibliography of the Case System and Other Topics in American Legal Education	365
	A. Some General References	365
	B. The Case System	365
	C. The Case Book	371
	D. The Professional Law Teacher and Practice	372
	E. Pastures New: Jurisprudence and Other Advanced Courses; the Relation of Our Law to Other Law, Other Sciences and the Public	373
VI.	Finances	377
VII.	Distinguished Alumni of the School	379
	Index of Topics and Places	403
	Index of Persons	409

LIST OF ILLUSTRATIONS

Christopher Columbus Langdell, by Frederic P. Vinton, 1893 *Frontispiece*
Isaac Parker . . . . . *facing page* 2
The House in which the School Began 8
Joseph Story 12
Dane Hall, as built 16
Joel Parker 20
Theophilus Parsons 24
John Chipman Gray 30
James Bradley Thayer, from an etching by Sidney L. Smith . . 36
Austin Hall 40
James Barr Ames 46
The Faculty in 1901 52
Langdell Hall 56
Ezra Ripley Thayer 60
Nathan Dane 68
Dane Hall Lecture room 74
Austin North 80
John Himes Arnold, by E. C. Tarbell 86
Dane Hall, 1845 90
Dane Hall Library — the Working space 94
Dane Hall Library — the Stacks 98
Dane Hall in its Last Years 102
Austin Reading-room 106
Justice Horace Gray 112
Justice Oliver Wendell Holmes 116
Edward Brinley Adams; Richard Ames; John McCarthy . . 120
Austin Steps about 1902 128
Justice Henry Billings Brown 132

Chief Justice Melville Weston Fuller 136
Justice Louis Dembitz Brandeis 140
Justice William Henry Moody 146
Austin Hall and field; Jarvis tennis courts 152
James C. Carter, by John Sargent 156
Joseph H. Choate, photograph by Falk 160
Harvard College 1832–1840, showing the original Dane Hall 164
The Faculty in 1916 172
James Barr Ames, 1874 176
Austin Stacks, with Ames' Desk 180
Letter from John H. Ashmun 192
Charles Smith Bradley, by Sir Hubert von Herkomer. 196
Joseph Doddridge Brannan 200
Justice Benjamin Robbins Curtis 204
John Chipman Gray, in Second Lieutenant's Uniform 206
Farewell Letter of John Chipman Gray 212
Simon Greenleaf 216
William Albert Keener 222
Christopher Columbus Langdell, about 1874 228
Austin Hall — The Corridor 238
Jeremiah Smith 254
Asahel Stearns, by Chester Harding 258
Edward Henry Strobel 264
James Bradley Thayer, about 1874 276
Emory Washburn 284
Chart of Attendance, 1817–1917 344
Chart of Finances, 1817–1917 377

THE CENTENNIAL HISTORY
OF
THE HARVARD LAW SCHOOL

CHAPTER I

HISTORY OF THE SCHOOL

UNTIL the year 1784 the American bar had been recruited from students apprenticed to attorneys, or at any rate from persons who learned law by service in the office of a lawyer. In the course of time certain lawyers obtained a reputation as good instructors, and their offices were resorted to by a number of students. These were often practitioners in the country, where a smaller volume of business left a man more time for the instruction of pupils. Thus, when Kent was a student in the office of Judge Benson of Poughkeepsie, he had five fellow-students. Shearjashub Bourne of Barnstable, Massachusetts, taught a considerable number of lawyers, among whom were Chief Justice Smith, of New Hampshire, Chief Justice Mellen, of Maine, and Judge Davis of the Federal court. Such an office was that of Judge Tapping Reeve, of Litchfield, Connecticut, in which in 1784 (or perhaps in 1782) was launched the first school of the common law in America; the transition was imperceptible between the law office and the law school.

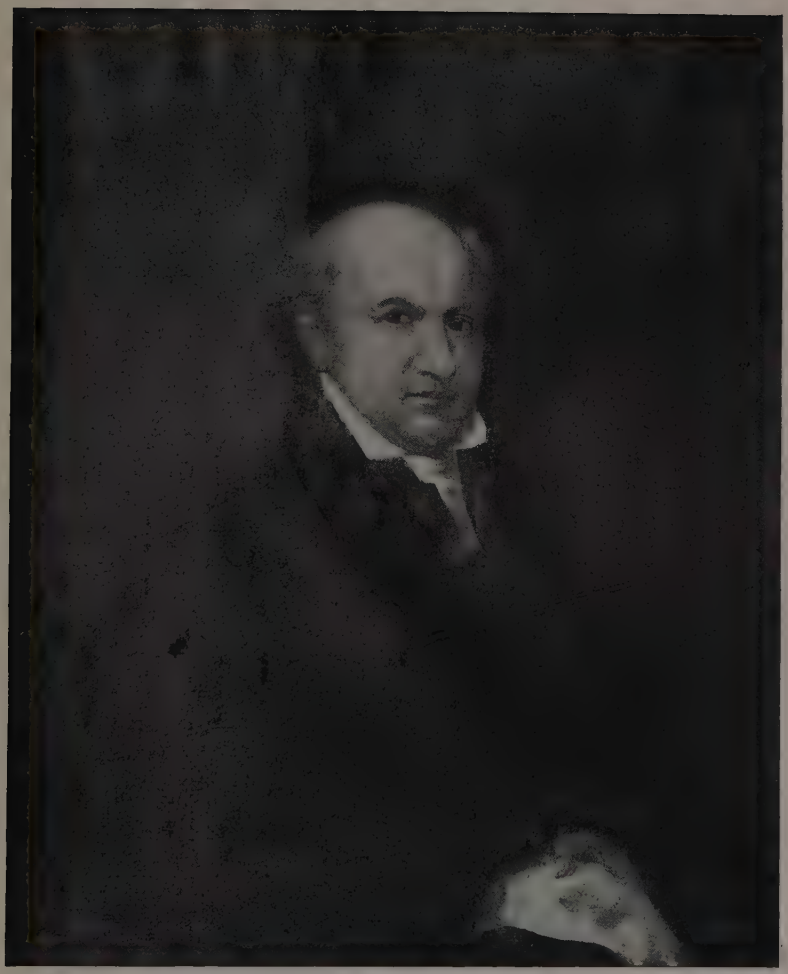
The Beginning

The student in a law office read such books as happened to be there; and, if his teacher were conscientious, talked over the books with his preceptor. But there

could have been no idea of class work. Though several of the students were together in an office, each must have pursued his own course; there could in general have been no set instruction before the time of law schools. With the beginning of the Litchfield school, however, class work began. The teachers in that school divided the law into a number of topics, and they lectured in turn upon each of the topics, devoting eight or ten lectures to each. The students were expected to take down the lecture and to copy their notes into books; and copies of these notes, each copy bound in about three volumes, are preserved in the Harvard Law Library.

On May 26, 1778, Isaac Royall, a wealthy citizen of Massachusetts, then resident in London (he strenuously denied that he was a Tory refugee), made his will, and in it provided for "a Professor of Laws in (Harvard) College or a Professor of Physick and Anatomy, whichever the said Overseers and Corporation shall judge to be best for the benefit of said College." Royall died in 1781; but it was more than thirty years before the Corporation got together the proceeds of this legacy. Before 1815 they succeeded in collecting a sum of money which, with accrued interest, amounted to about seventy-five hundred dollars. On August 18, 1815, the Royall Professorship of Law was established, and Isaac Parker, Chief Justice of Massachusetts, was elected to the office.

In the thirty-seven years between the date of Royall's will and the election of the first Royall Professor of Law, several such professorships had been established at other institutions. The earliest was at William and Mary College, where the Commonwealth of Virginia established a Professorship of Laws during the year 1779–80, with the celebrated George Wythe as Professor. Judge James Wilson was Professor of Law at the College of Philadelphia (now the University of Pennsylvania) in 1790, and James Kent at Columbia College in 1793. The lectures



ISAAC PARKER

Associate Justice of the Supreme Judicial Court of Massachusetts 1806–1814, Chief Justice 1814–1830, first Royall Professor of Law 1815–1827. (*From a portrait in the Social Law Library in Boston.*)

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of these professors, like those of the first Royall Professor, were delivered chiefly to undergraduates.

The duty of the Royall Professor was not to teach law to professional students. The endowment, as has been seen, was small, affording compensation for a few lectures only; and no time for more regular instruction could be spared from his engagements as head of a busy circuit-riding court (for at that time the Supreme Judicial Court of Massachusetts sat in each county in the Commonwealth, which then included Maine). The audience offered him was merely a voluntary meeting of College seniors and resident graduates, with perhaps a sprinkling of Boston lawyers; the same sort of audience to which the professors of law in the other colleges were lecturing.

Judge Parker's appointment did not involve the creation of a new department of the University; but several circumstances might have suggested such a new department to those in authority.

President Kirkland, who had spent some time in the German universities, introduced the elective system, undoubtedly in imitation of the German practice; and the organization of the German universities into several faculties must have suggested to him a separate faculty of law, as well as of divinity and medicine. Indeed, the separate schools of divinity and medicine were already formed or forming. Judge Parker himself, in his inaugural address (in April, 1816), had hoped that at some future time "a school for the instruction of resident graduates in jurisprudence may be usefully ingrafted on this professorship"; and this opinion seems to have been shared by many enlightened members of the bar. Whether the initiative came from the President or the Professor can probably never be known. On May 17, 1817, Judge Parker presented to the Corporation a plan in writing for a law school, which was adopted by the

Corporation on the same day, and Asahel Stearns was immediately elected University Professor of Law to take charge of the School. Such a step must obviously have been debated informally for several meetings; and the choice of the new professor required time. Judge Parker's plan must therefore be regarded not in any sense as the suggestion upon which the School was founded, but merely as the formulation of a plan already sufficiently considered and agreed upon.

The vote establishing the School provided for the appointment of a "University Professor of Law, who shall reside in Cambridge, and open and keep a school." It was to be his duty "to prescribe a course of study, to examine and confer with the students upon the subjects of their studies, and to read lectures to them appropriate to the course of their studies, and their advancement in the science, and generally to act the part of a tutor to them, in such manner as will improve their minds and assist their acquisitions." He was to be paid by the fees of the students. This was expressly declared by the Corporation to constitute "a new department at the University."

Having provided a professor, it was next necessary to assign a building. The College owned several dwelling-houses in Harvard Square; and one of them, the house formerly occupied by President Webber while he was Professor of Mathematics, and later by Professor Farrar, and in 1817 called "Second College House" or "College House Number Two," was chosen for the use of the School. It was an attractive two-story brick building, with a gambrel roof; and it was quite appropriate for a law school because it stood next the county court house. The court house then stood where the building of the Harvard Coöperative Society now stands, and Second College House was fifty feet further north. Three rooms on the ground floor were assigned to the School. One

of them was Professor Stearns' office; another room, thirty feet long, housed the library and was also used as a lecture room; the third was a small room for the librarian.

The story of the collection of the meagre library is told elsewhere; but the fact that these two rooms held professors, students, and library for fifteen years is sufficient witness of the insufficient number of books.

The School under Stearns

Professor, building, and library being provided, the new school opened its doors to students. But the students came slowly. They were excellent in quality; four out of every five were bachelors of arts. But the average number under Stearns was less than nine new men a year. They entered and left irregularly through the year, a fact that clearly indicates the desultory nature of the instruction. Indeed, the School under Stearns still retained many traces of the lawyer's office, in combination with methods of the Litchfield school. The chief work of the students was private reading of books recommended to them, with quizzes by the professor upon the passages read.

The School had, however, some distinct advantages over the old law-office training. A moot court was held, in which points of law were argued by the students. The records of the court from its establishment in 1820 to 1828 are still preserved, and contain formal reports of the meetings, the questions argued, and the decisions, with, oftentimes, a full copy of the pleadings and the judge's opinion. Stearns was Perpetual Chief Justice, while an Assistant Justice, elected from the students, sat in his absence. Written lectures were also delivered by the professors, which at the end of the period were described by Stearns as embracing "a general course of legal instruction, in which those parts of our system of jurisprudence in which we do not adopt the law of England

are particularly noticed and the grounds of our departure from it are explained and illustrated by the decisions and practice of our own courts." Although these lectures were evidently modeled after those at Litchfield, they were less frequent. This inferiority in class work was little more than formal, for the Litchfield students, like those in the mediæval universities, had to get their knowledge orally for lack of books. Having written out their own treatise, they proceeded to an individual study of it, while the students at Harvard could use the library. Yet it must be admitted that the new Law School showed no improvement in method over the old.

On the other hand, the foundation of a professional school of law at a university meant a far greater step forward than that taken by Judge Reeve. No English or American university had created a distinct school or faculty of law, but only professorships of law. With two professors of law teaching a body of students separately registered, the Harvard Law School was the first university school of law, as it is the oldest law school now existing, in any common-law country. To be sure, its imposing Faculty of Law was a bit misleading. For the twelve years of his incumbency, Judge Parker had no closer direct connection with the Law School than was afforded by the attendance of the students at his lectures and a vague understanding that he was occasionally to visit the School and examine the men. The working member of the Faculty was Asahel Stearns.

Stearns, upon his election, removed to Cambridge and took charge of the School; but his whole attention was not devoted to his professional duties. His reports to the President, made during the last three years of his incumbency, show an amount of time spent upon his duties at the School which can have occupied scarcely a third of his working hours; though the supervision of the moot court may occasionally have increased by half

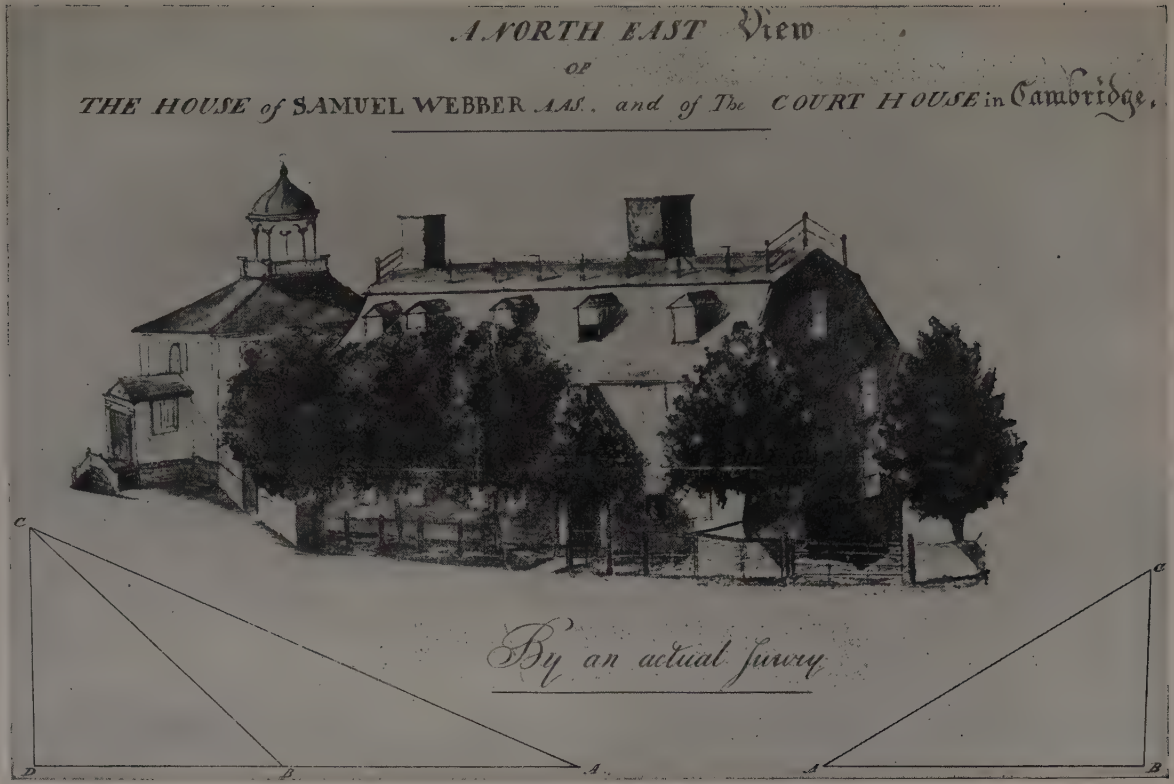
the time spent at the School. He had never relinquished the office of County Attorney, which he held at the time of his election; indeed, his meagre income from the students could never have furnished him a decent support. That he did all he could to perform the duties of his professorship is unquestionable; indeed, at one time he complained of the amount of his work, and asked for a colleague. But the new venture in education needed men with vision to see and skill to bring to pass the possibilities of university study of law in America. Neither Stearns nor Parker had just the skill or the vision. The number of students, never large, toward the end of the period rapidly decreased. The University suffered the mortification of seeing her most promising sons seek legal training in an office instead of in her school of law.

There were undoubtedly many reasons for this falling-off quite independent of the quality of instruction: business depression which lessened the number of law students everywhere; the multiplication of law schools in other parts of the country; the difficulty of traveling; the greater expense of education in Cambridge; the inadequate quarters of the School. The fact remains, however, that Stearns taught law no better than others, that he possessed no general reputation, and that he did not so impress himself upon his pupils as to make them warm advocates of the School in the regions to which they went. The fame of the School was not propagated through the country by its graduates.

Early in the twenties the Corporation attempted to secure as an additional teacher a man of national reputation. Several times during the decade Judge Story of the United States Supreme Court was invited to become a professor; but he could not quite decide to accept. It was obvious, however, that the Faculty must be strengthened if the School were to live and grow.

As a first step, the Royall Professor must devote himself to teaching professional students; and since Judge Parker could not spare time for it, some one else must be found to take his place. In the fall of 1827 his resignation was requested — rather abruptly and ungratefully, perhaps, considering his services to the School — and on November sixth he handed in his resignation, which was at once accepted. A few months later Kirkland gave up the presidency of the University. The year 1828 was passed in discussion of policies and candidates for the presidency; the advocates of a sound business policy finally triumphed by the election, early in 1829, of Josiah Quincy.

Meanwhile, the Corporation were expressing dissatisfaction with the work of Stearns; and a committee was appointed to confer with him before Quincy's inauguration, who informed him that the Corporation regarded his administration as a failure. In a manly letter, explanatory rather than apologetic, he resigned. One passage in the letter is of special interest. "The effect which the Law School has had in raising the general standard of professional education, by introducing a more methodical and thorough course of instruction, has of itself, if no other benefit had resulted, more than compensated for the expenditure. The course of instruction pursued here, which was drawn up under the eye of some of the present members of the Corporation, has not only been adopted in other law schools, but more than sixty professional gentlemen in this and adjoining states have applied for copies for the use of their students. And what is still more important, students in law offices have been more attended to and better instructed in consequence of the establishment of the School." The resignation was accepted by the Corporation in a letter courteously recognizing his attainments and his diligence, and the way was open for a complete change in the School.



THE HOUSE IN WHICH THE SCHOOL BEGAN

Second College House, in which three rooms on the first floor were used for the Law School and its library from 1817 to 1832, when Dane Hall was built. The house was originally the home of Samuel Webber, Professor and later President of the University, and was afterward bought by the college. The building at the left was the county court house, which stood on the site of the present building of the Harvard Co-operative Society on Harvard Square.

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Various opinions, severe or kindly, have been expressed with regard to the work of Parker and Stearns. They did plan and start a great enterprise. If Parker had found an Ames to catch up his idea and touch it with life, the School might much earlier have affected the thought and training of the American bar; or if the genial and rather easy-going Stearns had served with one of his more exact and profound successors, he might have popularized the university study of law without depriving it of strength and vigor. As it happened, however, neither could supply what was missing in the other; and the critical verdict upon their work must be, that it failed because it lacked the vigorous purpose of true scholarship. They had only opened a lawyer's office to students, had superintended their reading, furnished their books, and talked to them about various branches of law. With the resignation of Stearns this experiment came to an end forever in this country; and some more scholarly and helpful method had to be invented for giving students legal instruction and training.

The School under Story

Nathan Dane was a distinguished lawyer of Massachusetts, former member of the Continental Congress, author of the "Ordinance for the Government of the Territory Northwest of the Ohio," and prominent Federalist politician. He began in 1800 and finished in 1826 the publication of his Abridgment of American Law, a work which then became indispensable to an American lawyer, and still has a value for its reports of early American cases not to be found elsewhere. In the preparation of this work he was following the example of the great English lawyer, Viner, whose Abridgment was yet authoritative.

Viner had founded the Vinerian Professorship of English Law at Oxford from the royalties of his book;

and the published lectures of his first professor, Blackstone, had become a legal classic. Viner's example, as has been seen, had been followed by benefactors in America. Dane, however, had greater reason than they for fostering legal learning. He had already followed the earlier example of the Englishman; what so natural as that he, a Federalist and admirer of all things English, should carry the imitation further, and establish a professorship of American law at Harvard from the proceeds of his Abridgment? This in fact he did, devoting ten thousand dollars to the foundation; and desirous of stimulating legal authorship as Viner had done, he provided that the lectures delivered on the foundation should be published. Story's series of Commentaries, Greenleaf's Evidence, Parsons' well-known works, and Langdell's published writings have all been issued in compliance with this provision.

The Corporation accepted the gift on June 3, 1829, and appointed as first Dane Professor Joseph Story, whom Dane had nominated. Story had already refused the Royall Professorship; but he was willing to become the head of the School and devote to it all the time which could be spared from the duties of his judgeship. He was, however, to have an assistant, who should give his entire time. Story, in his own words, was to aid the students "by occasional explanations and excitements," while the other was to do "drill duty." For this task the Corporation on June 11, 1829, appointed as Royall Professor John Hooker Ashmun of Northampton, who had been an instructor in Judge Howe's law school at that place.

The new professors were inaugurated on August 25, 1829, Story delivering an enlightened inaugural address. The School opened on September seventh, and at once attracted twice as many pupils as had ever been in attendance at the School at one time. This immediate success

continued and increased during the whole period of Story's service.

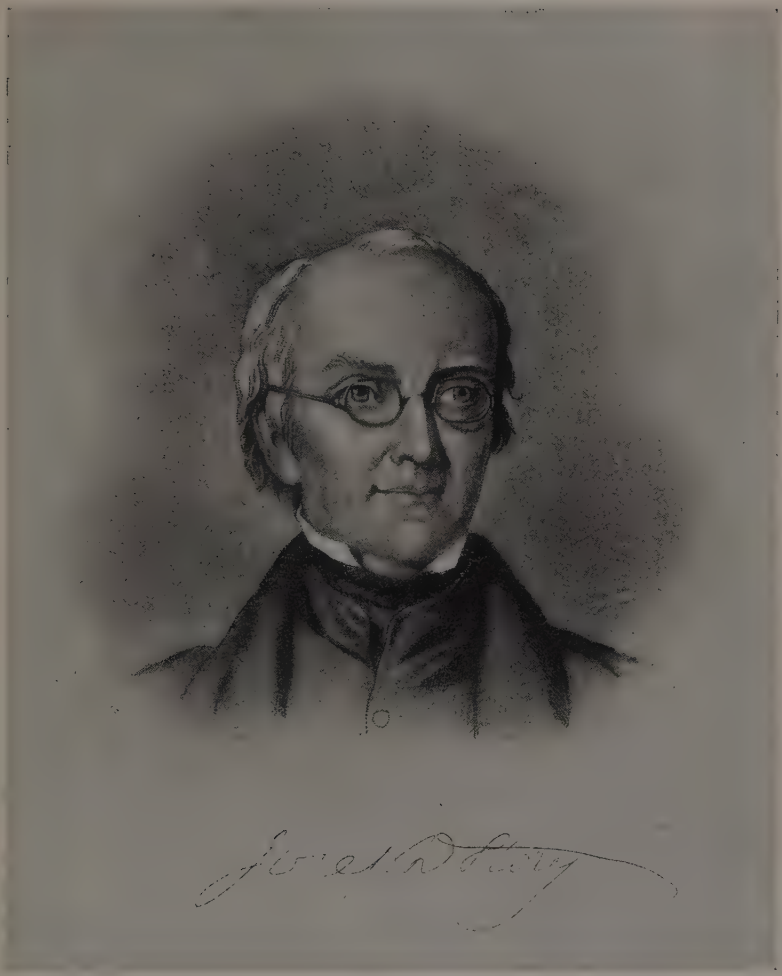
The chief event during Ashmun's professorship was the acquisition of adequate quarters. For three years the growing School continued in the small home of its infancy; and into it Story brought his large library, which the School had purchased. Just how large a portion of Second College House was then used for School work is not certain. Contemporary catalogues show that four upstairs rooms, numbered 6 to 9, were occupied by students, and that of the three downstairs rooms number 3 was set aside for the librarian. Presumably rooms 1 and 2 were those originally devoted to the library and the professors' office. Unless the School had spread into the floor above, and it had not done so in 1825, these two rooms still constituted the entire space occupied by the reading room, the professors' studies, the lecture room, and the library with its three thousand volumes. The need of a new building was great. Dane again came to the rescue. He had intended to leave the amount needed for the purpose as a legacy to the School, but, appreciating its immediate requirements, he advanced the money during his lifetime. He thus had the satisfaction of seeing the School properly housed three years before his death, in 1835, at the ripe age of ninety-two. On September 24, 1832, the "Dane Law College" was dedicated, to continue as the home of the School for more than fifty years.

Dane Hall in its first dozen years was a small oblong building with an ornamental portico in front and somewhat more spacious within than the earlier home across the street. The life of the School in its new surroundings must still have been simple; and the direct contact of the students with so distinguished a lawyer and so kindly a friend as Judge Story was in itself a liberal education. A pretty story is that of the Judge coming

into Dane Hall, one cold stormy morning, stamping off the snow, and saying to the students who crowded affectionately about him, "Gentlemen, this is one of the days when I would rather *facit per alium* than *facit per se*." "Do you remember," Dana wrote to Story's son, "the scene that was always enacted on his return from his winter session at Washington? The School was the first place he visited after his own fireside. His return, always looked for and known, filled the Library. His reception was that of a returned father. He shook all by the hand, even the most obscure and indifferent, and an hour or two was spent in the most exciting, instructive, and entertaining descriptions and anecdotes of the events of the term."

Ashmun, throughout his period of service, had been handicapped by ill-health; and on April 1, 1833, he died suddenly at the age of thirty-two, having in less than four years of service impressed his personality upon his colleagues and his pupils, who included some of the School's greatest graduates, although, feeble of body as he was, he could not in so short a time permanently affect the history of the School.

Ashmun appears to have continued the method of instruction of Stearns; but he was a man of greater force of mind. According to Sumner, he was "a lawyer of remarkable acuteness and maturity," who had the teacher's gift of exciting the desire for knowledge in the student. Story was the kindly master who in his lectures smoothed the rough places and was profuse with instruction and help; we may suppose his lectures, like his books, to have been learned, fluent, often original and profound, sometimes, however, dodging a difficulty rather than trying to overcome it. Ashmun furnished the "drill," the exactness and completeness of learning which was necessary but beyond Story's powers, in view of his other pressing engagements. Judge Hoar



JOSEPH STORY

Associate Justice of the Supreme Court of the United States 1811–1845 and Dane Professor of Law at the Harvard Law School 1829–1845. (*From an old print.*)

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speaks of Ashmun as a "model teacher"; and his epitaph, placed by his students on a monument erected by them at Mount Auburn, fondly proclaims that "he had the beauty of accuracy in his understanding, and the beauty of uprightness in his character."

On April 23, 1833, only three weeks after Ashmun's death, Simon Greenleaf, of Portland, Maine, was appointed to the vacant professorship. He was a friend and correspondent of Story, and had been reporter of decisions in Maine. A temporary employment to carry on the School until the end of the academic year was necessary; and James C. Alvord, a recent student in the School who had already achieved a marked success in practice, was engaged for the position. Greenleaf began work with the beginning of the academic year 1833–34, and at once became a power in the School. To his progressiveness was probably due, in January, 1835, the appointment of Charles Sumner as instructor; a position which he held from time to time for ten years. In the same year another new step was taken in the division of the School into classes, according to proficiency. It is clear that lectures or conferences attended by the whole School, without reference to previous knowledge or to progressive power of assimilating knowledge, can never be of the same value as lectures on a basis of previous knowledge of law. The immediate effect of this change was to standardize the term of attendance. Before 1836 there was no regular time for entering or for leaving. Beginning with that year men rarely left except at the end of a term, that is, in January or July; and while they did not always enter at the opening of the term, it became more and more usual to do so. The advantage of the new practice to the class work can hardly be overstated.

At the beginning of his professorship Story laid stress upon the scientific aspect of law; and this was also em-

phasized by Greenleaf. As Richard Henry Dana said, when he entered the School in 1837, the students were "invited to pursue the study of jurisprudence as a system of philosophy." A few years later Greenleaf stated, "The attention of students is constantly drawn to the law as a science"; and added that, as a result, the law was "mastered with a facility and readiness, and in a spirit of sound philosophy, to which the student in his private clerkship is almost totally a stranger."

And so, not slothfully, for both professors confessed that they studied daily to increase in teaching skill as well as in legal learning, but quietly and uneventfully, growing ever in numbers and in grace, the School went on during the remaining years of Story's life, an institution of one hundred and fifty students, its fame spreading from America to Europe. English lawyers testified that the course was a great deal deeper and fuller than at Oxford, and that the method of legal education had very much raised the character of the profession.

Both Story and Greenleaf felt the need of additional instruction in the Law School. They had at one time suggested the appointment of an additional professor of law. Story, however, finally decided to resign from the bench and devote his entire time to the work of the School. All arrangements had been made when his sudden death in the summer of 1845 prevented the consummation of the plan.

The true founder of the School, Story brought to the work an enthusiasm for law as a science and a real affection for his foster-sons, the students, which at once became an inspiration to the young men gathered to learn from him. His students, to use Sumner's affectionate language, "love him more than any instructor they ever had before. He treats them all as gentlemen, and is full of willingness to instruct. He gives to every line of the recited lessons a running commentary, and

omits nothing which can throw light upon the path of the student. The good scholars like him for the knowledge he distributes; the poor (if any there be) for the amenity with which he treats them and their faults."

Behind a great institution there must always be a great personality; and such was Story. His position in the highest court in the land, his esteem among lawyers throughout the nation, first brought him students; but his geniality, his affectionate dignity, his enthusiasm for the School and all connected with it, the interest and the authority of his somewhat desultory teaching, all combined to secure its coherence and growth. He found it a lawyers' office, bereft, as he asserted, of students; he left it established and important, the accepted model of schools of law wherever the common law prevailed.

His death threw upon Greenleaf the whole burden of instruction. With the assistance of Sumner and a young graduate, John C. Adams, the year 1845-46 was passed without change in methods or policy. But with the election of William Kent as Royall Professor (Greenleaf passing to the Dane Professorship) an event of great importance took place; a curriculum made up of courses of instruction was substituted for the former system of the successive study of particular treatises. While this probably meant little immediate change in practice, the curriculum and courses of the present time could never have existed without such a change in arrangement, however formal it may have been. In no other way did Kent's too short term of service affect the life of the institution; and when this period came to an end with the appointment of Joel Parker as his successor in the Royall Professorship, and the almost simultaneous resignation of Greenleaf, it was still the flourishing, enthusiastic, hopeful, but somewhat primitive School of Story.

The task of the Faculty during this period was the development of a new and better system of instruction, and the gathering of a large body of students from all parts of the country, thus nationalizing the School. The young men whom Story's fame and the charm of his personality drew about him were to be leaders of their generation. They received from him an inspiration and a love for the scientific part of the law which set them well on their way to an intellectual life. Benjamin R. Curtis, Charles Sumner, Richard Henry Dana, William Maxwell Evarts, Ebenezer Rockwood Hoar, James Russell Lowell, and Rutherford B. Hayes, to name a few of the great souls of their generation who sat under him, caught fire from his spirit and gave to the law they practiced and the politics they guided an intellectual depth which was lacking in the life of the succeeding generation. From Greenleaf the students gained a sounder knowledge of law than his predecessors had instilled; but the School was still rather the inspirer of ideals than the moulder of legal thought.

The School under Parker, Parsons and Washburn

After a disquieting but vain attempt to persuade Rufus Choate to accept the Dane Professorship upon Greenleaf's resignation, the Corporation filled the place by the appointment of Theophilus Parsons, July 15, 1848.

The end of the preceding period had seen the School grow too large for the contracted quarters of Dane Hall, and an addition to the old building was required. This took the form of a transverse addition across the rear end, larger than the original building. This addition contained a large reading room and library, and a lecture room above. The old portion of the building was in large part devoted, on the ground floor at least, to rooms for the professors. In this enlarged building the third period of the School began. The patriarchal organiza-

DANE HALL

As it appeared from 1832, when it was built, until about 1845, when the addition shown at page 90 was made in the rear

(*From a woodcut in The History of Harvard University, Josiah Quincy, 1840.*)

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tion of Story's time was perforce abandoned. No longer could the head of the School greet his pupils before the big fire, and regale them with anecdotes of Washington life. Each professor retired to his room, where he read and wrote, and received his pupils one by one; the students were shepherded in their reading room, under the direct control of John Sweetman, the janitor, — a unique personality who made the library rules, picked up the books after the students, and discussed with them abstruse points of law, besides going to lectures and making suggestions to the professors for their improvement.

The serious difficulty to the recently appointed professors of undertaking their novel work was somewhat lightened by two instructors: Franklin Dexter and Luther Stearns Cushing. Dexter (1793–1857) had graduated at Harvard College in 1812; he was one of the foremost lawyers at the Boston bar. His lectures in Constitutional Law evidently impressed Senator Hoar, who, in his Autobiography half a century later, names him first of all his law teachers; but his one year of teaching made no great impression on the School. Cushing is best known as a Reporter of the Supreme Judicial Court of Massachusetts, and as the author of an authoritative treatise on Parliamentary Law. He taught that subject for three years, and was one of the first persons to conduct in the School a course upon the Civil Law. Parsons urged that he be made professor, but the Corporation declined to follow the recommendation.

In the autumn of 1849 Frederick Hunt Allen was chosen as University Professor of Law. He had won a high place at the bar in Bangor, and was "strongly recommended by many Maine lawyers," but the appointment can hardly be regarded as more than a curious accident. He seems to have been no better qualified

for the position than half the country judges of New England. The experiment was not a success, and at the end of the year he was not reappointed.

On January 31, 1852, Edward G. Loring became a lecturer, and he conducted courses and sat in the moot court for two years until, in 1853, the number of students had so increased that a new professor was felt to be necessary. Parker and Parsons favored the appointment of Loring, "whose services so far as we know are very useful and entirely satisfactory." The Corporation elected him a professor, but unfortunately he had for more than ten years been United States Commissioner, and would be called upon to act in fugitive slave cases, and the anti-slavery men on the Board of Overseers, then a political body, opposed confirmation. The Corporation thereupon withdrew his name. Loring continued to serve as Lecturer, to the apparent satisfaction of the students, until 1854. In that year he was called upon to issue a warrant for the apprehension of Anthony Burns, an alleged fugitive slave, to hear the testimony, and to order his return to slavery. This was one of the cases which aroused the anti-slavery feeling of Massachusetts; and Loring became intensely unpopular for his part in the matter. The students, the Faculty, and the Corporation stood loyally by him, being unable to see why he should be detested for doing his plain legal duty; and he was reappointed Lecturer for the year 1854–55. The Overseers, however, overruled the appointment.

In his place the Corporation appointed, first as Lecturer and then as University and Bussey Professor, Emory Washburn, lately Governor of Massachusetts. From this time the School was under the direction of the triumvirate, Parker, Parsons, and Washburn.

From the point of view of the School's progress this period was an uneventful one. The curriculum and the

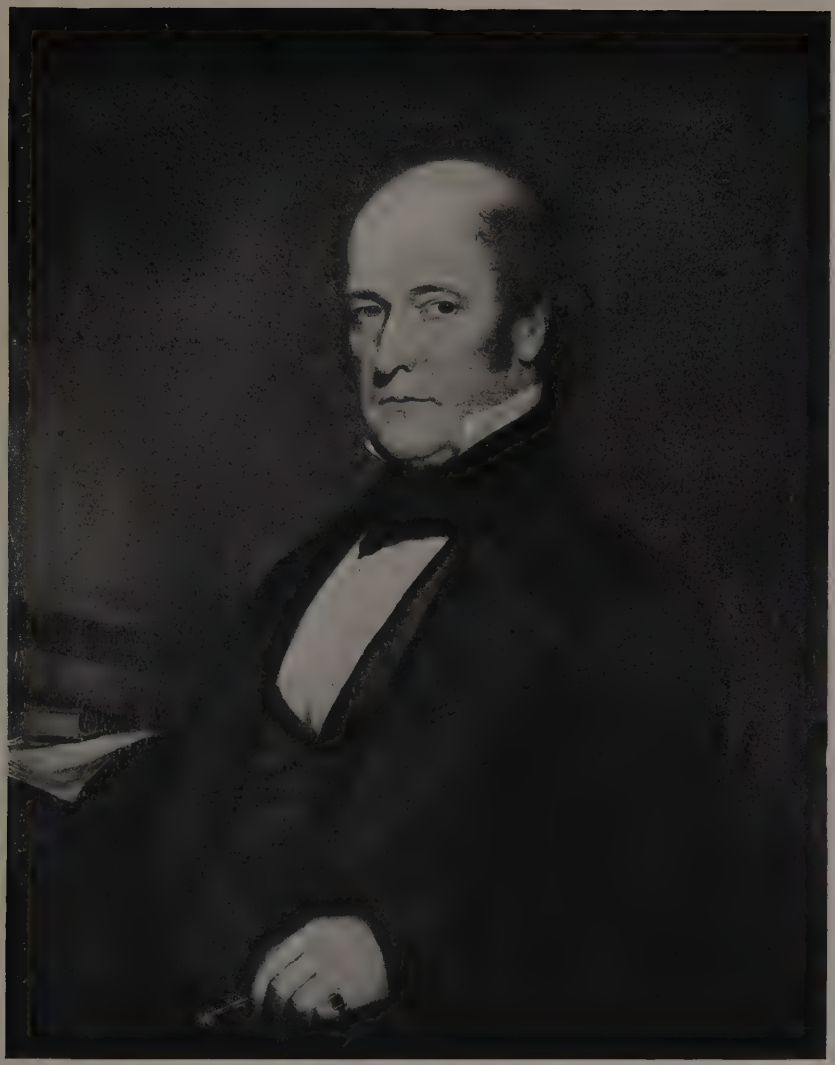
general methods of instruction changed only gradually, if at all; the number of students, leaving out the years of civil war, increased and then fell back; the life of the students, their methods of study and devotion to work, remained about the same. The names of Story and Greenleaf were still the names to conjure with, and their characters, qualities, and methods were curiously repeated in their successors. Parker recalled Greenleaf in the exactness and profundity of his learning, the sobriety of his character, and his power to stimulate the minds of the best men. He was the stiff and formal man of law, learned and profound — quite too profound to reach the average mind, but regarded as "the fountain of jurisprudence" by his most brilliant pupils; a hard fighter, grim and sarcastic against what he regarded as wrong; not fluent and easy to follow, and even obscure at times; but manly, forceful, reliant, and reliable. Parsons was Parker's complement. Like Story he was amiable, enthusiastic, anecdotal, and even chatty, delighting in converse with the students, and not given to over elaboration or subtlety in his teaching. Genial and frank in manner, fluent and convincing in statement, clear and skillful in exposition, interesting and impressive, he was an ideal teacher for the average student, and persuaded the very ablest that he was "almost, if not quite, a man of genius." Washburn was the best loved of the three. He took a great interest in every student; his room was open to his pupils at all times. He lectured vividly and eloquently; he was one of the few teachers in the history of the School who have used that method. He made the dry rules of Property live, and his lecture room was a place of enthusiasm.

The other two men used a different method. Their teaching began with a continuation of the older system: study of a required text and an examination in class upon the text, with verbal comments by the instructor. As

time went on, the instruction tended to take the form of lectures on the subject, with occasional quizzes of the students; but the change, if there was one, was in emphasis, not in kind. Judge Parker made an exact assignment in the textbook and covered it faithfully. Parsons also used a textbook, but he encouraged discussion, explained extraneous difficulties, and showed in many ways a better teaching method. In every period of the School's history, but particularly in the School of Parker, Parsons, and Washburn, the very differences of methods of instruction were in themselves an education.

The only temporary appointment during the administration of these three men was that of Richard Henry Dana, as Lecturer on the Law of Nations from 1866 to 1868.

Politics shared the thoughts and activities of professors and students during this period. The earliest alumni association, the Story Association of 1850, perished a-borning by reason of political feeling. It celebrated its first year by a dinner with an oration by Rufus Choate; the oration was eloquent, sensible, even inspiring, but conservative. The radicals of the day attacked it as unsuited to do honor to Story the progressive; the contest raged, and the Association died. Soon after this came the denial of a professorship to Edward G. Loring, because he had stood up against the prevailing political opinions of his time. Washburn indeed proved a professor who could let politics alone, though in time of need he served his country in the home guard. But Parker and Parsons plunged into political discussions, and maintained them until the end of the period. Both at first took the anti-slavery side; but after the outbreak of the Civil War Parker's natural conservatism began to control him, and he was soon engaged in an acrimonious contest with his more radical colleague. This contest, and others similar, embittered the last years



JOEL PARKER

Royall Professor of Law, 1848–1868

(*From the portrait in the possession of the School.*)

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of Parker's service, and no doubt influenced his resignation, in 1868.

"The School of Parker, Parsons, and Washburn" was a real institution of learning. The professors were men of power and impressed their students as only really great teachers can; the students regarded the School as "without a rival," to use the phrase of Mr. Justice Brown. In the opinion of Mr. Joseph H. Choate, this was the golden age. It is not surprising that the Visiting Committee for 1864 reported that they "were entirely satisfied with the condition of the School."

And yet this institution, led by men of such varied yet precious gifts, with a student body drawn from east, south, and west, enthusiastic and reasonably diligent, became as years went by an essentially unscholarly place. Science, the aim of Story and Greenleaf, was no longer regarded as the object of study in a law school. The purpose of students of this time in the School, as well as in the later career of their generation at the bar, usually was practical and self-centered in the highest degree. There was, as Judge Phelps has said, "a distinct anti-Story reaction." The library was richer in the literature of the foreign law than any other in the country; but "not one of the works of these foreign jurists was read by any student." Judge Blake, insisting that the students of this time "did not waste their opportunities," adds that "twenty-five per cent would have passed a satisfactory examination in the courses there prescribed." Mr. Joseph Choate says that "whoever wanted to learn, learned quite enough."

There was an attempt to stimulate scholarship by the offer of prizes for legal essays; and during this period the School conferred such prizes on many students who subsequently justified the honor. For a few years students of merit and need were honored by appointment as assistants to the professors; assistants, not in teaching,

but in investigation. To this practice we owe the remarkable work of Langdell, while a student, upon Parsons' Contracts, — work which was the precursor of his epoch-making Cases on Contracts. The moot courts carried on by the Faculty were also a stimulus to the study of law, and a student's organization for debate, called first the Parliament and later the Assembly, pursued a chequered career, troubled by the party politics of the northern and southern students, and now and then suppressed by the Faculty.

Yet at the end of this period of trial something was felt to be lacking. The satisfaction with the School, expressed by the professors year after year, seemed perfunctory; students began to fall off, and soon after Judge Parker's resignation, the Visiting Committee of the Overseers reported, in 1869, that in their opinion the condition and prospects of the School "should be carefully considered by a committee." This report led to the resignation of Professor Parsons. The period ended, like the first period, in a verdict of failure, rendered by a jury of eminent lawyers; and although Parker, like Stearns, vigorously attacked the verdict as unjust, it has been approved by time.

What reasons can be given for this failure? Lack of vision, of progress; self-satisfaction apparently justified by the continued outward success of the School; failure to read the signs of the times.

Everything about the School was stereotyped. For twenty years the language of the Catalogue as to entrance, course of study, and degree was not changed by a letter. There was no recorded faculty meeting during the entire period. The Corporation framed the general rules for the School, in which the Faculty were endowed with the following functions: to license boarding-houses and public meetings, to administer discipline, to recommend candidates for degrees, to make regula-

tions for the use of the library. Even this last power of the Faculty was withdrawn in 1855; and from that time the library rules were made in theory by the Corporation, in practice by the janitor. A Corporation making regulations for the School, but never entering it, and a Faculty that never met — how could they face the new needs which arose with war and reconstruction, inflation and the new industrialism?

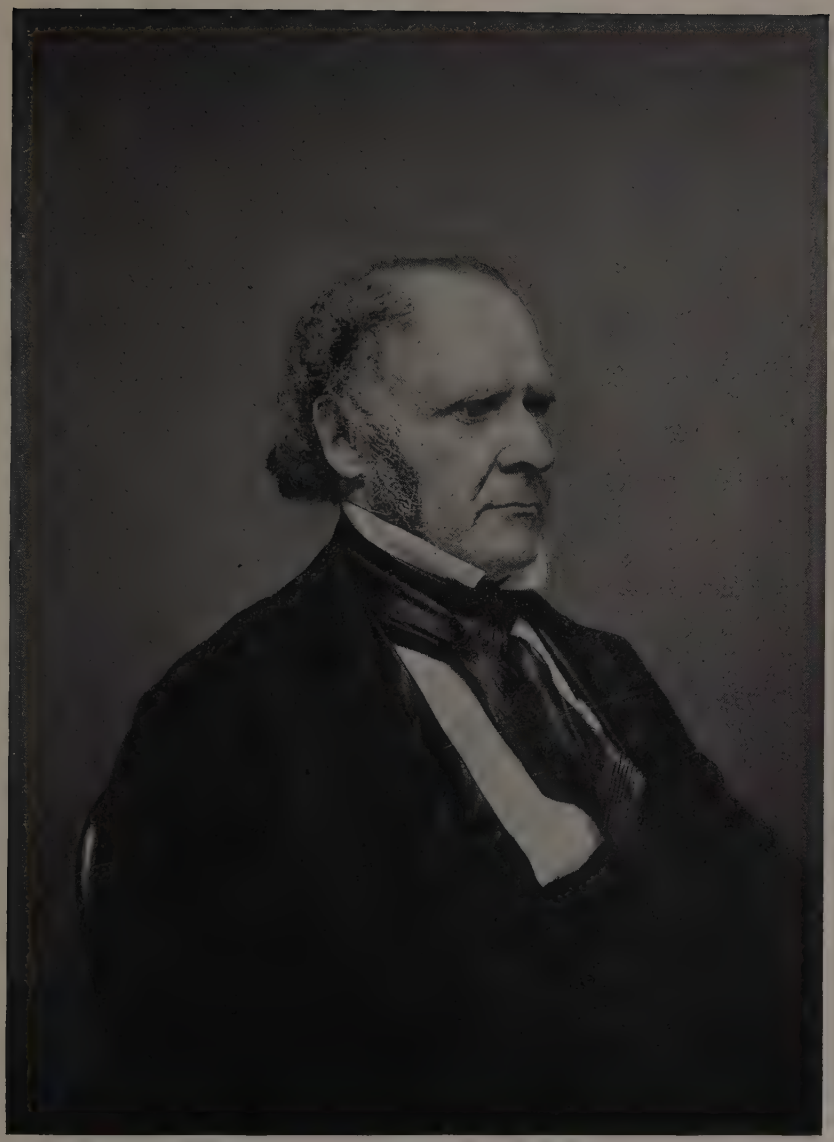
A public indictment was brought by the *American Law Review*. "For a long time the condition of the Harvard Law School has been almost a disgrace to the Commonwealth of Massachusetts. We say 'almost a disgrace,' because, undoubtedly, some of its courses and lectures have been good, and no law school of which this can be said is hopelessly bad. Still, a school which undertook to confer degrees without any preliminary examination whatever was doing something every year to injure the profession throughout the country, and to discourage real students. So long as the possession of a degree signified nothing except a residence for a certain period in Cambridge or Boston, it was without value." This rather bumptious criticism is obviously exaggerated, and Parker's indignant rejoinder may be viewed sympathetically; the facts stated affected only the degree, the guinea's stamp. The character of the instruction and its effect on the student body made the School, and the School was, so far as it went, good. It failed because it remained content with the excellence already attained without striving to go forward.

Nothing was done to impose requirements for admission except a certificate of good character, which had been sufficient for most of the previous history of the School. It is true that down to 1865 about two-thirds of the students had been college graduates, but the proportion began to diminish after 1845, and from 1865 to 1870 it suffered a sudden reduction, very likely as a result of

the Civil War; during these years the number of college graduates was considerably less than half of the entire number. This diminution in quality of the students doubtless had its influence in laying the work of the School open to criticism; but the Faculty remained quiescent and felt no need of any improvement.

Nor had any important change been made in the course of study during the period. The traditional subjects were still pursued, through the use of textbooks, and the textbooks were changed only to introduce the new works of members of the Faculty. Room was found for a few years for a course on Arbitration, but the subject of Torts they never discovered, though it was growing rapidly in importance during the period. Most of the courses were given only in alternate years, thus securing the teaching of all the subjects in the curriculum in time, but a student could enter, take all the courses offered to him, and receive his degree after a year and a half of residence without a chance to pursue such fundamental topics as Contracts, Agency, or Evidence. Neither attendance nor preparation was required for recitations or lectures, and as a considerable part of the class sat in the seats of the unprepared, the exercise furnished no test of the work done by a student.

There was no other test. The degree, given for the payment of three term fees, was more expensive, but in other ways indistinguishable from the contemporary degree of Master of Arts. The written examination, on which the degree now rests in every American university, was not known. The preparation for examination, the review of the year's work, which is the only really constructive work required of a student of law, troubled not the nerves of the weakling. "There was no cramming," says Mr. Joseph Choate, "which is such a vitiating feature, in my judgment, in the modern methods." In fact, the degree was no warrant that



Theophilus Parsons.

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the holder of it had in any way mastered the difficulties of a single branch of the law.

The attitude of the Faculty towards the School is typified by a sentence of their report to the President of the University, first invented in 1860 and repeated unchanged each year until the end of the period: "There have been no new arrangements in relation to the organization of the School or the course of instruction," to which was added, in later years, "The Faculty have nothing to add to their previous reports on these subjects."

It would be unjust, however, to blame this intense conservatism as if it were peculiar to the Harvard Law School. It was shared by every law school in the United States; one might almost say, by every institution of learning. Scholarship was at that time so universally conservative that this quality had come to be accepted as necessary to a scholar. The only criticism that can be leveled at Parker, Parsons, and Washburn is that they were not in advance of their time; but fortunately those men of light and leading, Eliot and Langdell, were soon to bring to the Harvard Law School the glory of leading in the reform of legal education.

The Deanship of Langdell

The appointment of Christopher Columbus Langdell, to succeed Parsons, was a personal act of the new President. Eliot himself has stated the reason for his choice. Twenty years before, when the new President was a junior in college, he used to go often in the early evening to the room of a friend who was in the Divinity School. "I there heard a young man who was making notes to Parsons on Contracts talk about law. He was generally eating his supper at the time, standing up in front of the fire and eating with good appetite a bowl of brown bread and milk. I was a mere boy, only eighteen years old; but it was given to me to understand that I was listening to a man

of genius. In the year 1870 I recalled the remarkable character of that young man's expositions, sought him in New York, and induced him to become Dane Professor. So he became Professor Langdell." Langdell was at this time a rather obscure though far from unsuccessful lawyer in the city of New York; member of a firm which gave to the United States an attorney general and a district judge, but himself known chiefly to a small circle of lawyers. Heretofore, in selecting a professor, the object of the Corporation had been to secure a man of mark, whose prestige would increase that of the school; a man who, by long practice in the law, had become familiar with the content of it. The principle which underlay Langdell's selection was quite other; as he himself explained, a teacher of law should know expertly not so much the content of the law as the method of studying it. "What qualifies a person, therefore, to teach law is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of causes — not experience, in short, in using law, but experience in learning law; not the experience of the Roman advocate or of the Roman prætor, still less of the Roman procurator, but the experience of the jurisconsult."

For a long time the wisdom of this change remained doubtful in the mind of the American bar. As a protest against it, the Law School of Boston University was founded, having on its Faculty eminent members of the Boston bar, and for many years it was regarded as a more practical school for lawyers than the Harvard Law School. Not until Ames' appointment as assistant professor in the year 1873 can it be said that the new method of appointment was accepted even at Harvard.

The School to which Langdell returned after sixteen years of uneventful practice in New York was little changed in character since his student days; but the

senior professors had resigned, the School was falling off in numbers, and the profession was beginning to feel that something of scholarship was lacking in its organization. However, a new President was in office, and new statutes had been passed for the governance of the School. Two important changes were required by the Corporation. The Faculty was to meet and choose a dean; and the degree was to be awarded only after examination.

"The Faculty of each professional school," the new statute ran, "elects a Dean, whose duty it is to keep the records of the Faculty, to prepare its business, and to preside at its meetings in the absence of the President."

In accordance with this statute the first recorded faculty meeting in the history of the School was held on September 27, 1870, with the President in the chair; and on motion of Professor Washburn, Langdell was elected Dean.

The office thus outlined in the statute was little more than the secretaryship of the Faculty. There was no precedent for the interpretation of the provision; deans were novelties in American education, and Langdell was probably the first in this country to head a faculty of law. His election therefore meant nothing as to his position in the Faculty. Without a conscious purpose in the mind of the first incumbent, the function of dean might have come to be merely that of a clerk. But Langdell had a mission. The deanship was to be in his hands an instrument of reform. He was a strong man with a mind to do; his successor was another; and their terms of office, extending through critical years of legal education, fixed the office of dean of a faculty of law, for the entire country, as an office of leadership and of eminence.

The new-fangled position was no sinecure for its first occupant. He came as a reformer; his two colleagues, Washburn and Nathaniel Holmes, who had succeeded

Parker as Royall Professor, were conservatives. The reforms he wished to institute were likely to diminish the students in numbers rather than attract them. His predecessors had been willing to do things without consulting their colleagues, unless indeed they left the Corporation to do them; he might have done as they did, made his new rules, secured the approval of the Corporation, and thus effected his reforms unopposed. But this was not Langdell's way. His loyal and justice-loving soul would have loathed such a victory. It was his nature to regulate every least act by some well-founded principle. Throughout his life as Dean, he was never content to justify action that he proposed by its intrinsic usefulness; he must elaborately consider its conformity to principles already laid down by the Faculty, or else present it as an application of some principle, not indeed previously acted upon, but of unquestionable legal validity. His remarks in support of proposed legislation had all the characteristics of judicial opinions; the recorded votes of the Faculty he regarded as judgments, and they were usually accompanied in the record by brief lawyer-like reasons. Such a man could certainly not do without meetings of the Faculty. To them he turned to secure the reforms he sought: the revision of the curriculum, more stringent requirements for admission and for graduation, the standardization and gradation of courses, a written examination upon each course, and the lengthening of the term of study for the degree. On each of these reforms he must expect to find his two colleagues lukewarm or opposed to him. His reliance for accomplishing his plans must be upon his own power of persuasion, and upon the vote and influence of the President.

To Eliot, though he was interested both by natural bent and by education in the scientific studies rather than the humanistic, and apparently never much in

sympathy with what must have seemed to him the artificial and unscientific principles of law, we owe the success of the new experiment. Led by his sense of what was right, desiring above all that every department of the University should have the utmost scholarly development, he not only brought Langdell to the School and made him Dean, but he stood behind him in the trying years of change. By means of the power that a President may legitimately wield in such a crisis he secured the appointment of the remarkable teachers whose memory is the glory of the later School. Thus by voice and vote in meeting, by support in the Corporation, and always by sympathy with every movement for strengthening the scholarship of the School, Eliot helped and encouraged Langdell in the work of change. To this work Langdell now addressed himself; and the history of the School for the ensuing twenty-five years is the history of these reforms.

The first act of the new Faculty was to establish a progressive curriculum. Under the old system nearly every subject was taught in alternate years to a class composed of both first and second year men. The subjects were now divided into first and second year courses, and no student was to be given credit in the subjects of the second year until he had passed the first year examinations. The curriculum was also modernized by the introduction of Torts. Another early step was the abolition of prizes and the offering of scholarships covering the tuition fee to men of high rank who were unable to support themselves. No scholarships have ever been awarded in the School in the first year, since the first year student cannot meet the requirement of proved success in legal study. Several years later a small loan fund became available, and from this first year men and others whose rank did not entitle them to a scholarship have from time to time received help.

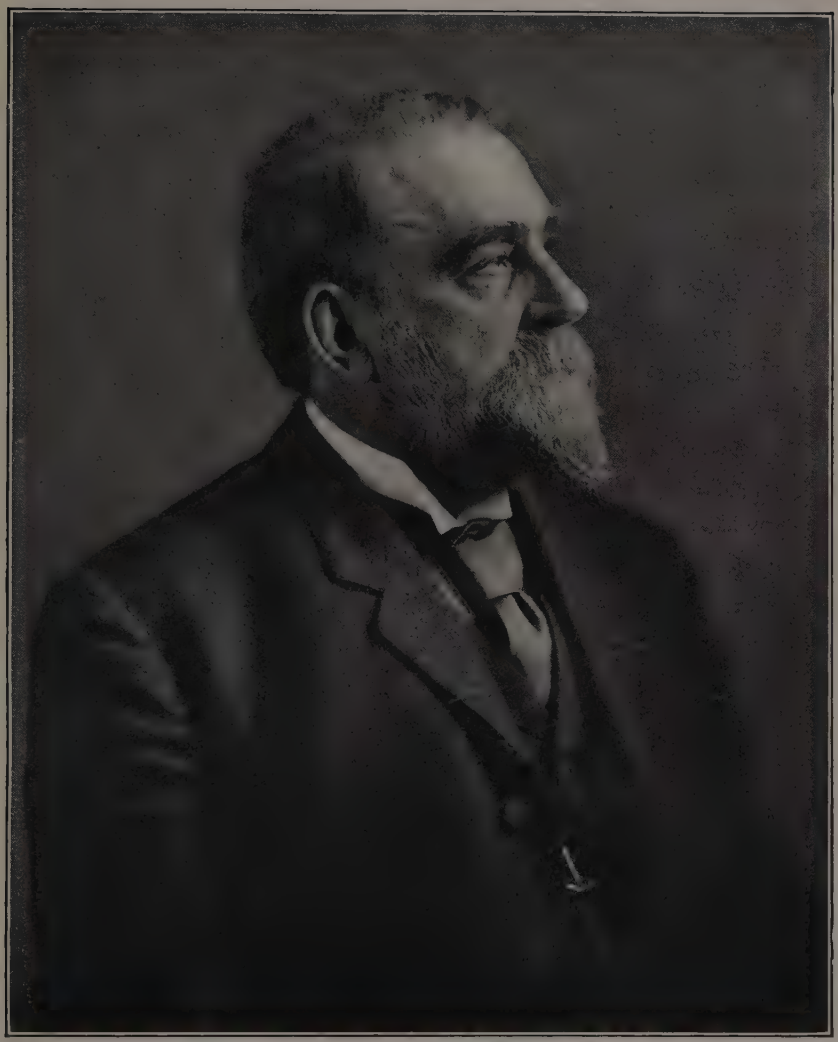
The scholarships have always been regarded as a deferring of the payment of the tuition fee, and a considerable amount of money has been paid back to the School on account of scholarships received in course.

During the first three years of the new régime a number of lawyers at the bar or on the bench were appointed to assist Langdell and the two older professors by giving instruction in particular courses. Three of these, Bradley, Gray, and Holmes, afterwards became regular professors. The other lecturers were Edmund Hatch Bennett, afterwards the first Dean of the Boston Law School; Nicholas St. John Green; John Lathrop, upon Shipping and Admiralty; Benjamin Robbins Curtis, late Judge of the Supreme Court of the United States, upon the Jurisdiction and the Practice of the United States Courts; and Benjamin Franklin Thomas, upon Wills.

In 1872–73 John Himes Arnold began his long service in the Law School, which continued for forty-one years, until his resignation upon September 1, 1913. Chapter III of this book describes his great work in the development of the library.

The next year, 1873–74, marks the appointment of two of the teachers whose services to the School were a large factor in its success. James Barr Ames was appointed Assistant Professor of Law June 2, 1873, and James Bradley Thayer became Royall Professor of Law on December 8, 1873.

The appointment of Ames created even more surprise than that of Langdell. He was a recent graduate of the School, without experience in practice, but he had won considerable success as a teacher in Harvard College. President Eliot, in explanation of the choice, said that it would not be surprising if young teachers could do a portion of the work of instruction better than older men. The Corporation and the Board of Overseers gave their



John C. Gray

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consent with reluctance, but the success of the young man then in question abundantly justified the President's explanation. "What is to be the ultimate outcome of this courageous venture?" asked Eliot, fifteen years later: "In due course, and that is no long term of years, there will be produced in this country a body of men learned in the law who have never been on the bench or at the bar, but who nevertheless hold positions of great weight and influence as teachers of law, as expounders, systematizers, and historians. This, I venture to predict, is one of the most far-reaching changes in the organization of the profession that has ever been made in our country."

In 1875 the system of the last five years of employing lecturers who were in practice at the bar was definitely abandoned. Experience seemed to show that temporary appointees who were practitioners did not make the best teachers of law, and that a man who could teach law well as a lecturer could teach it far better as a permanent professor. Many qualities which lead to success at the bar are of little value to the teacher; on the other hand, devotion to teaching as a life work is essential to the best work in teaching. The immediate result of this determination was the addition of a fourth full professorship, the Story Professorship of Law.

To this chair was appointed John Chipman Gray. Gray's connection with the School as a teacher was the longest in its history. More than forty-three years elapsed from his appointment as Lecturer on Law, on December 24, 1869, to his resignation on February 1, 1913, and his continuous service was over forty-one years.

In 1874 the Faculty had made further provision for the homogeneous character of the student body by requiring that the law student be nineteen years of age on admission. As early as 1875 the teachers announced their opinion that a college training was a desirable pre-

requisite to professional training in law. The Faculty voted with the approval of the Corporation that "the course of instruction in the Law School is designed for persons who have received a college education"; but that "for the present, young men who are not bachelors of arts will also be admitted to the School as candidates for the degree upon passing satisfactory examination." This action of the Faculty and Corporation was severely attacked in the Board of Overseers, and a long discussion ensued, but the opposition resulted in no action, and the matter was finally dropped. The admission examination of candidates for degrees who were not graduates of colleges remained in force so long as persons not college graduates were admissible.

In 1876 the Faculty voted to lengthen the course of study for the degree to three years. As in the case of other of Langdell's reforms the Faculty here willingly took a step which it knew was beyond its power immediately to enforce to the full extent. The three years' course was adopted, but it was also provided that persons might remain in the School for two years and then receive the degree upon passing the examinations at the end of the third year without attendance at the classes of that year. During the same year and thenceforth the position of the Law School as a real institution of learning, with a degree that stood for definite achievement, was recognized by the invitation to a person in its graduating class to appear upon the Commencement platform.

In April, 1876, Professor Emory Washburn resigned. While he had been loyal to the new régime, and concurred willingly in every action that tended to raise the standard of the School, he was too old comfortably to accept and employ the new methods. A man in his position with a less amiable and enthusiastic nature might very seriously have hampered the work of reform; and it is to his lasting credit that instead of hindering

he helped. Progressive as any person of his age and traditions could be, it is nevertheless not surprising that he was unable fully to fit into the new order of things; and his resignation while regretted was not a matter for surprise. The high appreciation of his work which was expressed by the President and Corporation, and by the Visiting Committee of the Overseers, was no mere form. His death a few months after his retirement was deeply mourned by every professor and student in the School.

Washburn was succeeded in the Bussey Professorship by another successful lecturer in the School, Charles S. Bradley, of Providence, a former student and a quick and fertile lawyer, recently Chief Justice of Rhode Island. After three years, however, Judge Bradley returned to practice, which he found was more congenial than teaching. Meanwhile Ames had resigned his position as assistant professor, with the expressed intention of entering practice. His success as a teacher, however, had been so great and his loss would have been so detrimental to the School that the Corporation at once elected him to a full professorship. This election, offering him a permanent teaching career, was accepted; and upon the resignation of Bradley he was appointed to the vacant Bussey Professorship.

From this time for more than a quarter of a century the four great teachers — Langdell, Thayer, Gray, and Ames — carried on an enthusiastic and increasingly successful School.

To thousands of their students this was the high-water mark of the School's history, but on such a question there will always be a split of authority. Not long ago several members of the class of 1896 met and spoke of their time as the golden age of the Law School, referring with appreciation to Langdell, Ames, Gray, Smith, and Thayer, as well as others. The father of one of the men, who had himself been a member of the class of 1863,

happened to be present. He said, "Young men, you doubtless went to a very fine law school taught by a competent Faculty; had you a man who wrote on real property with the authority of Emory Washburn, or on all phases of business law with the distinction of Theophilus Parsons, and had you as lucid a teacher as Joel Parker? And yet I will not myself claim to have attended the law school in its golden age, because when I was there there were many who still remembered Joseph Story as a teacher of law, and who insisted that the most flourishing period of the School had been in his day." To others the deanship of Thayer is so glorious to recall that it seems impossible that any earlier time could have been more wonderful. For each of us indeed the days he spent at Harvard Law School are a golden age.

Langdell's skill as administrator — a skill which remade the School in every important particular — is overshadowed and almost forgotten by reason of his services to legal education in the invention of the new method of study and teaching, which bears his name. This he appears to have worked out while he was a student in the School; and with the opening of the first year of his service as professor, in the fall of 1870, he put it into operation.

"The day came for its first trial. The class gathered in the old amphitheater of Dane Hall — the one lecture room of the School — and opened their strange new pamphlets, reports bereft of their only useful part, the head-notes! The lecturer opened his.

"'Mr. Fox, will you state the facts in the case of Payne *v.* Cave?'

"Mr. Fox did his best with the facts of the case.

"'Mr. Rawle, will you give the plaintiff's argument?'

"Mr. Rawle gave what he could of the plaintiff's argument.

"Mr. Adams, do you agree with that?'

"And the case-system of teaching law had begun. . . .

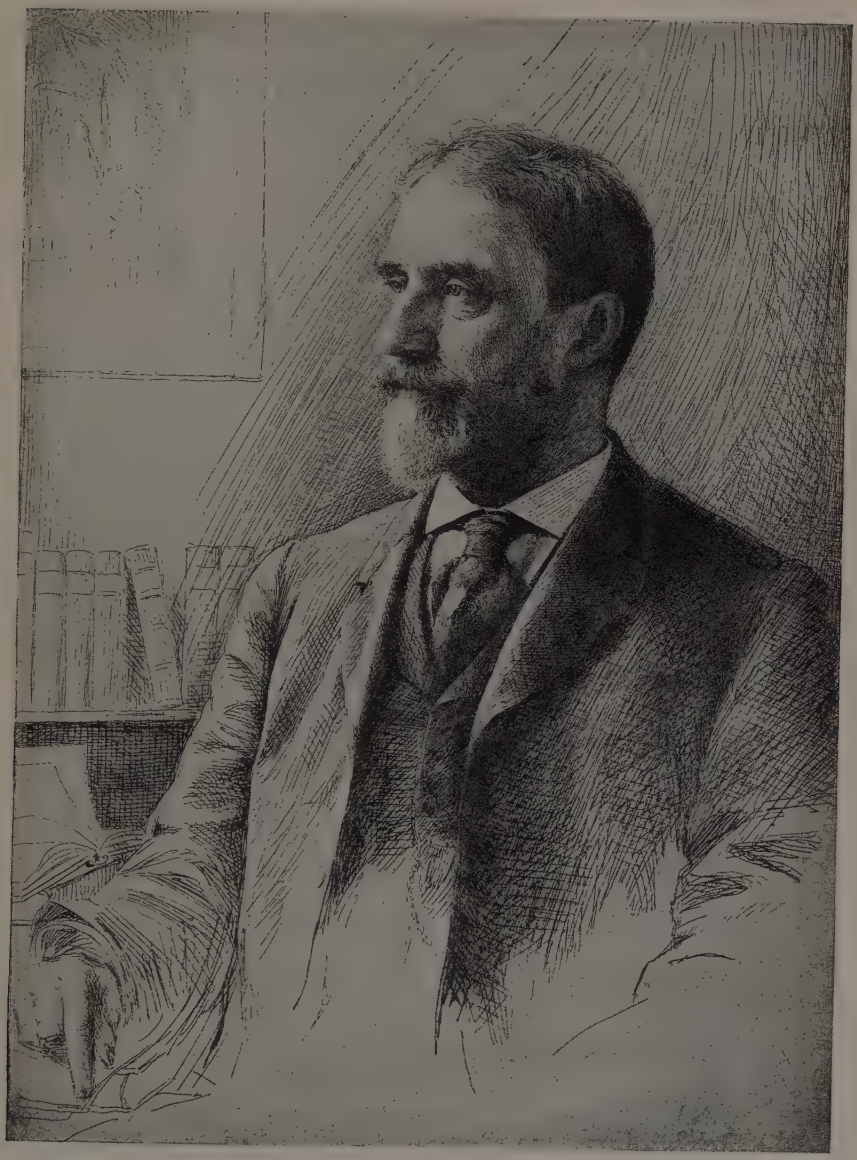
"Consider the man's courage. . . . Langdell was experimenting in darkness absolute save for his own mental illumination. He had no prestige, no assistants, no precedents, the slenderest of apparatus, and for the most part an uncompromising *corpus vile*. He was the David facing a complacent Goliath of unshaken legal tradition, reinforced by social and literary prejudice. His attempts were met with the open hostility, if not of the other instructors, certainly of the bulk of the students. His first lectures were followed by impromptu indignation meetings. — 'What do we care whether Myers agrees with the case, or what Fessenden thinks of the dissenting opinion? What we want to know is: "What's the law?"' "

A controversy at once sprang up as the efficacy of this method of instruction. To most of the students, as well as to Langdell's colleagues, it was abomination. The students cut his lectures; only a few remained. But these few were the seed of the new School. They included several men who afterwards attained national reputation: James Barr Ames, his greatest pupil and successor, Franklin G. Fessenden, member of the Superior Court of Massachusetts, Austen G. Fox, a leader of the New York bar, Edward Q. Keasbey, of New Jersey, James J. Myers, speaker of the Massachusetts House of Representatives and one of the leaders of the Boston bar, and Francis Rawle of Philadelphia, a president of the American Bar Association. Working out his cases with these enthusiastic young men, patiently and thoroughly as he always worked, Langdell did nothing to force upon others the acceptance of his system. In a few years Ames was appointed to the Faculty, and brought youth, fire, virility, into the contest; but for many years the two were alone in their use of the new method. It was ten years before others acceded to it.

Finally, all of Langdell's colleagues adopted his invention, and Thayer and Gray became its chief public defenders. Keener carried it to Columbia, Wambaugh to Iowa, Wigmore to Northwestern; the number of students at Harvard greatly increased; distinguished English lawyers approved it; the students trained under it gained notable success at the bar. Long before Langdell's retirement as Dean the case for his system was won.

But though Langdell's system was eventually accepted by all his colleagues, their methods of using it were entirely different. Langdell himself was not a born teacher. The course of his thought was too deliberate and ponderous; he relied too entirely upon intellectual process to reach all classes of students. He possessed in high development the historical sense and the logical faculty. His collection of cases included all important cases upon each topic, beginning with Tudor times; and in class he went carefully through each case, taking up every point presented and extracting every possible legal principle from the case. His method was that of Coke; and in these modern days it was criticised as slow and as ill-arranged. He certainly covered little ground. As he grew older, his eyesight failed, and he was forced to rely entirely on lectures for conveying instruction; and many students found even greater difficulty in making much of his courses. But for the better men his was a wonderful training in close legal thought, in precision and breadth of statement, in remorseless logic.

Those whose ideas of the "case system" of instruction were self-constructed thought this a departure from the system. As a matter of fact, any method of teaching is entirely consistent with that system; for, as James Thayer has shown, it is, more exactly, a system of study rather than of teaching. Its chief thesis is that the student in preparing for a lecture should study cases, rather than the conclusions which others have derived from



JAMES BRADLEY THAYER

(From an etching by Sidney L. Smith.)

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the cases; *petere fontes* is its motto. Having prepared himself for a lecture by such study, the student may then, consistently with the application of the system, receive help from the teacher in any way in which the teacher is able to give it.

That development of the Langdell system which was finally adopted as the best method was the invention of Ames; or, perhaps more accurately, he perfected it and adapted it to use in teaching law. Ames as a teacher had the good qualities which Langdell lacked. His mind was broadly trained, full, and ready, and moved rapidly enough to keep the interest of the class alive. His logical sense was under control, and could bend to political or social necessity; he was a thoroughly trained historian, but he used his historical knowledge only as a means of judging the law of the present and the future. He was intensely alive to the problems of the day, concerned for justice rather than for precedent, though insistent on reaching his results by legal principles; forceful in presentation, patient in argument, convincing in his conclusions. The Socratic method of teaching, with him, was neither a club nor a rapier. Like Socrates himself, he desired to open the eyes of his students and let them discover the truth for themselves. He would rather state a problem than a solution. His favorite device in teaching was to put one good student against another, that the class might learn the law from their argument.

Almost without exception, Ames' pupils enthusiastically admired his method. It was a stimulus to the slow pupils and a delight to the more acute. But it was as a man that he won the affections of younger men. He was a born leader; and his high ideals of professional honor and of justice influenced profoundly, through his pupils, the whole American bar.

James Bradley Thayer was essentially a scholar.

Some one has said that he might as well have been a professor of English or of the Classics as of law; and indeed, anything he undertook must have been done with the same finished scholarship which he showed in law. Langdell was a lawyer turned scholar; Thayer a scholar turned lawyer. As a teacher, he now and then fell a little short, by reason of the very excellences of his mind. He saw too keenly considerations on both sides of a question to teach dogmatically, and the thoroughness of his investigations led him to suspend judgment. The average man was sometimes bewildered by his discriminations and cautious hesitation. In his earlier days he would give out and expect his pupils to read a chapter in a treatise, and then, assuming that the author's views had been mastered, he would distinguish, or doubt, or deny — deliver "a commentary on an undelivered lecture," as was wittily said. Later he prepared case books, and conformed more to the methods of his colleagues, but always he was the delight of the better men. His fine mind, his delicious shades of thought, his gentle strength, his elegant scholarship, were the admiration and the despair of the pupils he cared most to influence. And while not every pupil understood him, all loved him.

John Chipman Gray was a "rock of trust," in Ezra Thayer's inspired phrase. He was a successful teacher, first of all because his words carried conviction. He was a clear and elegant lecturer, and in his early years he lectured exclusively. He gave out four or five cases, or other authorities, each day, to be read by his class; but he seldom considered them at length. The first five or ten minutes of each lecture were devoted to a masterly summary of the preceding lecture, the remainder of the time to the new matter. His lectures were in perfect form, clear, full, convincing; each was a literary masterpiece. Later, after he had adopted the case system, he had less opportunity to display his distinctive

skill as a lecturer, but remained a remarkable and successful teacher under the new method.

No further appointment was made to the Faculty until the year 1879–80, when Henry Howland of the Boston bar was appointed Instructor in Torts, an office which he held during four successive years. In 1882–83 Professor Thayer's sabbatical year of absence made four additional instructors necessary: for Evidence, Louis Dembitz Brandeis, now Associate Justice of the Supreme Court of the United States; for Criminal Law, Franklin Goodridge Fessenden, later Justice of the Superior Court of Massachusetts; for Constitutional Law, Brooks Adams, now Professor in the Law School of Boston University; and for Sales, Charles Maynard Barnes, of the Boston bar.

The test of the new régime came in the years between 1876 and 1886. The country was passing through a period of financial stress, and more young men than usual had to earn a living instead of devoting time to study. As Langdell's reforms all went into effect they cut down the number of students, both by keeping out unqualified persons and also by repelling many who feared to face the higher standard. The competition of the Boston University Law School seriously lessened the number of graduates of Harvard College entering the Law School. This decrease in students made the financial position of the School precarious. The first light came in 1882 with the endowment of a new professorship, afterwards named for its donor, William F. Weld. To this chair was appointed Oliver Wendell Holmes, Jr., now Associate Justice of the Supreme Court of the United States. Though his actual service lasted only a few months, his enthusiastic scholarship and magnetic personal qualities were of distinct help to the School, and in subsequent years his loyal support has never failed. In the same year, 1882, a considerable amount of money

was raised as a book fund, and Austin Hall was presented to the School. These three gifts, coming at a time of depression, served to fix the financial condition of the School on a firm basis. The courage of the Faculty and their belief in the final triumph of their progressive measures had never wavered, and the rapid growth of the School in numbers and influence, which began with the removal to the new building, was never checked.

This new building had long been necessary. The quarters in Dane Hall had been almost unbearably overcrowded, but the School had no resources upon which to draw. The old building had been unaltered since its enlargement in 1845, except that in 1871 it had been moved toward Harvard Square in order to make room for Matthews Hall, and in the process had lost its Ionic colonnade. President Eliot had often mentioned the need of new quarters to the Corporation, and now they were able to supply this need through the desire of Mr. Edward Austin, a merchant of Boston, to erect a memorial to his brother, Samuel. Mr. Austin offered to give $100,000 for the purpose, and H. H. Richardson, then the leading American architect, was asked to make designs. When the plans were submitted to contractors it was found that the cost would be $135,000, but Mr. Austin increased his gift to that amount; and in fact the actual cost greatly exceeded this estimate. The building when completed proved to be one of the most beautiful of its time, and well adapted, upon the whole, for a school of four hundred students and a library of forty thousand volumes. The activities of the School at once expanded, and there can be no doubt that better work was done in the adequate new quarters than could have been accomplished in old Dane Hall.

Upon Justice Holmes' resignation in 1883, William A. Keener was appointed Assistant Professor, and subsequently Story Professor. Keener was a teaching genius.

AUSTIN HALL

Occupied since 1883. Gift of Edward Austin, Esq.

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Not a scholar, nor well loved like his colleagues, he had a most remarkable ability to instruct by the Socratic method. His method differed greatly from Ames'. Ames led; he drove. Ames aimed to persuade; Keener to convince even against the will. His favorite form of argument was the *reductio ad absurdum;* and he had wonderful skill in detecting imperfect reasoning.

In the year 1886–87 the Faculty increased the amount of instruction, and for this purpose appointed three instructors: Henry Warren Torrey, who was for many years McLain Professor of History in Harvard College, delivered a course of lectures on International Law during this academic year; Joseph Bangs Warner, of the Boston bar, had charge of the course on Constitutional Law; William Schofield, later Justice of the Superior Court of Massachusetts, continued to teach Torts for the next four years.

1886–87 may be fixed as the year in which the increasing success of the School became marked. In the autumn of 1886 was celebrated the 250th anniversary of the founding of Harvard University. At the same time a number of graduates of the Law School conceived and carried out the plan of establishing the Harvard Law School Association, to which all former pupils of the School should be eligible, and which should undertake the work of increasing the success and usefulness of the School. A dinner was held, at which the speakers included Langdell, Eliot, James C. Carter, Judge Hoar, and Judge Sewall, a member of the first class in the School. A public address was delivered by Judge Oliver Wendell Holmes. Both the oration and the speeches were in the highest degree brilliant and enthusiastic; and this public commendation of the School and its work was of great value in attracting students. The Association became very useful in assisting graduates of the School to enter practice in leading law offices. It stimulated the loyalty of former pupils,

and led to an immediate increase in numbers and national influence. In Langdell's words, "The School awakened to the fact that its old students are its natural friends and supporters."

In this same year the students in the School founded the *Harvard Law Review*, a legal periodical of scholarly aims, which has since that time occupied high rank and has been frequently quoted by courts of last resort. Among the Board of Editors of the first volume were Julian W. Mack and Edward T. Sanford, afterwards judges of the Federal courts, and Joseph H. Beale, Homer H. Johnson, Blewett Lee, John H. Wigmore, and Samuel Williston, later professors at Harvard or other law schools. The new periodical received the hearty support of the Faculty, and particularly of Professor Ames, who contributed the opening article, gave his constant supervision and advice, and became chairman of its Board of Trustees when such a Board was made necessary by its increasing prosperity.

For three years, beginning with 1888–89, Heman White Chaplin was Lecturer on Criminal Law. He was a member of the Boston bar and author of a volume of short stories of singular charm.

On March 10, 1890, Professor Keener resigned his position to accept a professorship in the Columbia Law School. From the point of view of Harvard Law School this was a matter for deep regret; for Keener's ability as a teacher was of the highest character. The students vainly endeavored, through the *Law Review*, and by a general petition, to keep him at the School. From the point of view of legal education in general, however, Keener's acceptance of a professorship and subsequently the deanship at Columbia Law School is an event of striking importance. His introduction at Columbia of the Langdell system of instruction caused the secession of some of the older teachers and the formation of a private law

school for the pecuniary gain of the teachers. The resulting comparison of a school for private gain on the one side, and a school striving for higher scholarship on the other, set sharply before the American bar the alternatives of mere bread and butter education and of legal scholarship. The importance and the geographical situation of the Columbia Law School brought this question into national prominence more than ever, and Keener's work there went very far toward bringing the Langdell system into national use.

The vacancy in the Story Professorship was filled by the appointment of Jeremiah Smith, a graduate of the Law School in 1861, and formerly a member of the Supreme Court of New Hampshire, who continued to hold this chair until his resignation in 1910. At the same time Samuel Williston, a recent graduate, who had been practicing in Boston, became Assistant Professor. He was made Professor of Law in 1895, and an incumbent of the Weld Professorship in 1903.

In the year 1892–93 the division of the first year class into two sections made two further additions to the Faculty desirable. Eugene Wambaugh, a graduate of the School in 1880, who had been teaching in the University of Iowa, and had just formed as Dean a new law school at Western Reserve University, was appointed Professor of Law. In 1903 he became the first Langdell Professor. Joseph Henry Beale, of the Class of 1887, who had given a few lectures on Damages in the year 1890–91, and been appointed Lecturer on Criminal Law and Carriers the following year, became Assistant Professor of Law in 1892. He was made Professor in 1897, and after occupying the Bussey and Carter chairs, was appointed Royall Professor in 1913.

About this time the School began to give courses in the practice of Massachusetts and New York for the benefit of students intending to settle in those states. Frank

Brewster, of the Boston bar, became the first instructor in the Peculiarities of Massachusetts Law and Practice in the year 1890–91, and continued to hold the office for five years. The first lecturer on New York Practice, 1892–93, was James Byrne, now one of the leaders of the New York bar. The press of business prevented his lecturing in the following year, although he was appointed to do so, and in his place was chosen Ernest Lee Conant, then instructor in the Common Law in Harvard College. Another innovation at this period was a course in Patent Law, which was taught by Frederick Perry Fish, a leading specialist in that subject.

The result of the division of the first year class into sections was not altogether satisfactory. Although the sections changed instructors at the end of each half year, so that every man sat under both teachers, comparisons were inevitably made by the students and one of the instructors was apt to suffer; and since attendance at recitations has always been voluntary at the School, some of the students showed their preference by attending the classes of the favorite instructor exclusively. Furthermore, a class which was not divided proved quite teachable. Therefore, the division of the first year was temporarily abandoned.

An unexpected consequence of this event was the great increase in the amount of elective courses. There are always those who deprecate an elective system in a law school on the ground that it encourages students to study comparatively useless specialties instead of the great staple courses. The answer to this objection always given at Harvard is that no one can learn at a law school the entire content of the law; that all a school can accomplish is to train the student in principles and methods, teach him how to look up a new case, and leave him to do so; and that many subjects of law offer a good medium for such training. Since the beginning every possible encourage-

ment has been given to students to select their own studies; Langdell limited this wide choice by making the course a required one for the first year, but this was because the courses required were preliminary, rather than because they were indispensable on account of their subject-matter.

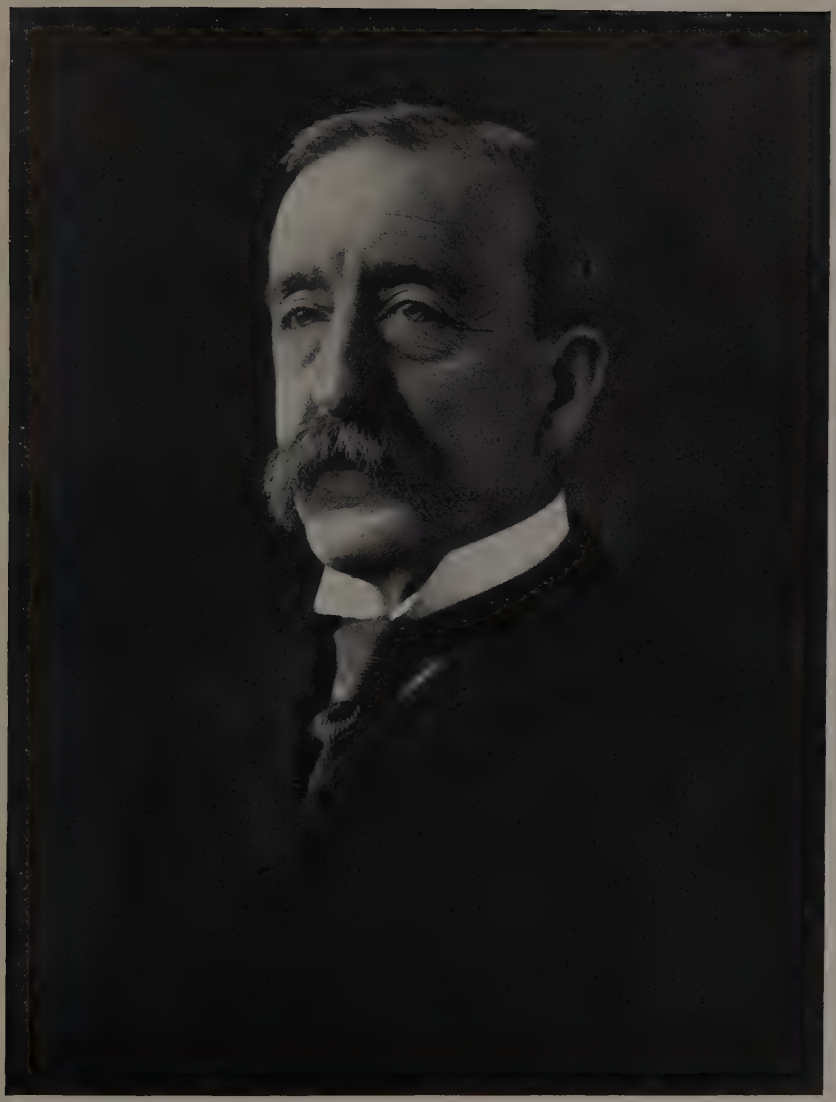
The extent of election, however, was limited by the smallness of the Faculty. As late as 1890 it was possible for a student to take every course in the School, though three or four more courses were given than he could be examined in; his election was therefore confined within narrow limits. In 1886 the students petitioned for more courses; and in response the Faculty increased the number as rapidly as possible. With the abandonment of the division of classes, in 1893, a considerable additional amount of elective work was offered, and from that time there has been a large amount of real election in the second and third years of the curriculum.

The rapidly increasing resort to the School brought for the first time before the Faculty the problem of cutting down the numbers. It was obviously desirable that this cut should come in the more poorly prepared rather than the better prepared candidates. In 1891, therefore, the Faculty voted that at the end of the next year no one who was not a college graduate, whether candidate for the degree or not, should be admitted to the School without passing an examination. The next year a still higher standard was required by providing that no one who failed to pass an examination in at least three subjects would be allowed to continue in the School. The result of this legislation was to exclude from the School certain persons who desired to remain in Cambridge connected with the University, but without any wish of completing a curriculum or taking a degree. In 1893 the School took the final step by which only college graduates were eligible for the degree. The vote was passed by the

Faculty, unanimously and without hesitation, and was approved by the Corporation.

As the School grew larger and Langdell became blinder, it became increasingly difficult for him to carry on the work of the deanship; and in 1895 he resigned the office after twenty-five years of service. The statute had long since been changed, so that the appointment of his successor was made by the Corporation; but the Faculty were consulted and unanimously approved the choice of Ames. Probably either of his seniors would have been appointed if he had desired the office, but both joined in urging the appointment of the younger man.

Langdell's administrative work may be thus summarized. He found a School with no educational requirement for admission; in the last year of his deanship the requirement of a college degree was adopted. There had been no regular curriculum; a few subjects were taught yearly, and a larger number were given in alternate years. At the end of his term a complete curriculum, arranged progressively for three years, was given each year; ten hours of prescribed studies in the first year, thirty-eight hours of elective study in the second and third years (from which eighteen or twenty hours had to be chosen), and two extra courses. The course of study for the degree, if such it could be called, at the beginning of the period was a year and a half of residence, with no requirement of work to be done and no examinations; at the end three years' residence was required, and the successful passing of examinations on twenty-eight or thirty year-hours of work. He found a school of 136 students; he left one of 413. He found a library of less than ten thousand books; he left one of thirty-four thousand. He found a Faculty of three professors; at the end of his term of office there were eight members of the Faculty and two instructors. He came to a school with an endowment of less than thirty-seven thousand dollars,



James Barr Ames

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struggling under the shadow of a deficit; he left office with funds of three hundred and sixty thousand dollars and a surplus of twenty-five thousand dollars. The School at his coming was housed in the small brick structure which had been its home since the time of Story; during his term of office it moved into a spacious and beautiful stone building, a worthy dwelling-place for a great school. Such work is given to few men to do. But in Langdell's case, as has been said, it was overshadowed by the even more striking success of his method of study, and the consequent change in the attitude of students toward their profession. Learned lawyers there have always been; scientific lawyers before Langdell but a few. It is hardly too much to say of him that he found the profession of law a trade, and left it a science.

The Deanship of Ames

Coincidently with the beginning of Ames' deanship, the School became a graduate school of law; that is, the only persons admitted as regular students were either graduates of approved colleges or "persons qualified to enter the senior class of Harvard College." A list of approved colleges was published in the catalogue, with the proviso, however, that it was "not intended to be exhaustive, and will doubtless be enlarged from time to time."

It is hardly possible to-day, when the law school which is open only to college graduates is common, and the profession has accepted a college education as a desirable prerequisite for the study of law, to think back and imagine the boldness of the step taken by the Faculty in making the new requirement. It is true that a large percentage of college graduates had always been in attendance; and at the time the rule was adopted over two-thirds of the students were college graduates, besides a considerable number "qualified to enter the senior class of Harvard College." But the Faculty could not know

that the number of college graduates resorting to the School would be much increased. They hoped that eventually the School would not lose; but they faced an almost certain falling off in numbers by one-third. When one remembers that the School was dependent upon the receipt of tuition fees even for the payment of salaries, the boldness of the step is evident.

The result, however, falsified all expectation. A school made up almost altogether of college graduates proved exceedingly attractive to college graduates; they preferred it greatly to a school where they were taught together with a considerable proportion of less well-trained young men. The change did not even check the growth of the School. There was, to be sure, a slight falling-off for a year; but this was due to the artificial increase in numbers for the year preceding the change, caused by non-graduates who took advantage of their last opportunity to enter as regular students. The example of Harvard was soon followed by many more of the better schools. But Harvard had all the advantage of priority. College graduates having begun to resort to the school where they would be associated with their own kind, this attraction has continued and increased; and it may fairly be said that the action of the Faculty in 1893, taken under the leadership of Langdell and Ames, has made possible the School of the present and the future.

This serious increase in the requirements for admission was not carried out without considerable opposition, especially from other schools and from lawyers in all parts of the country. The example of Abraham Lincoln, who without any schooling whatever had made himself a successful lawyer, has served to fortify ten thousand arguments against the step. Harvard was at first attacked not merely as exclusive, but also as asserting the obvious untruth that only college graduates were fitted for the practice of law. Such an assertion was very far

from the minds of the Faculty. There were a hundred schools of law in the country where persons who had not received a college education could be trained. It was believed that Harvard could do better work by becoming an exceptional school in which only college graduates should be trained, leaving to the other schools the task in which they were already engaged, of training in one class men of various degrees of education. It was the belief of the Harvard Faculty, a belief which experience has fully justified, that better work could be done under the Langdell system of instruction by teaching a homogeneous body of men, that is, men whose mental training was similar, and whose intellectual experience fitted them to apprehend instruction adapted for their degree of education. The increasing numbers taught at Harvard have brought with them great pedagogical difficulty; it would have been impossible to carry on such large classes if the students had not already such an amount of education as made them unusually responsive to new ideas.

Nevertheless, the Lincoln legend affected the regulations of 1893. In order that the non-graduate should not be entirely excluded from membership in the School, provision was made for admitting as special students persons of mature age whose natural ability and experience in the world might be supposed to compensate for the lack of academic training. The Faculty has always kept in mind the fact that some of the ablest graduates in the history of the School never received an academic degree. It was provided that special students who obtained a grade of B might receive the degree. This action has been greatly misunderstood by those who have not known the history of it. The theory of the Faculty was that the degree in law should be a guarantee of a certain quality of mind in the recipient of it. It was intended to mean not merely that the holder of it had a required modicum of legal knowledge, but that he had such ability

to enter into practice of a learned and exacting profession as three years' study at the School by a person already liberally trained might be expected to give. If the degree were to mean that, the special student who received it must show in some way that his natural ability and experience in life were such as to make up for the lack of a set college education. The Faculty believed that a special student who received a grade of B in competition with college graduates had sufficiently proved himself to have such ability and experience. No mere test of a written examination can certify to the acquirements of those who barely succeed in passing it; for such men the examination test must be supplemented by such previous educational history as will form an additional guarantee of quality. The special students, therefore, who on the examination test did not show remarkable excellence, could not be guaranteed as possessing the desired quality. Those, however, who placed themselves in the upper quarter of the class were felt to have proved themselves fit for the degree. To many persons it has seemed hard that special students who, with all their disadvantages, succeeded in passing their examinations should not receive the degree; the explanation just given will at least indicate the reason of the Faculty in passing the rule.

While the rule admitting special students to the degree was thus in its origin a slight modification of what was generally regarded as a very rigorous practice, the experiment on which Harvard thus entered proved so quickly successful and so soon became the generally accepted standard, that within fifteen years Harvard was reproached for not really being a graduate school, because it offered the degree to persons not college graduates. And indeed the rule was one which, if administered laxly, might seriously have diminished the prestige of the School. The best answer to the criticism lies in the actual practice. In the fifteen years from 1896–1910

there were admitted to the School 3488 students. Of this number 49 or 1.1 per cent were persons without a degree. Only figures like this can prove that the Faculty were really maintaining a graduate school. These persons did not, in fact, prove themselves to be of high quality. Of the 49 admitted only 9 have ever received the degree. The meagreness of their numbers and their moderate intellectual ability finally led the Faculty to withdraw the offer of a degree to special students.

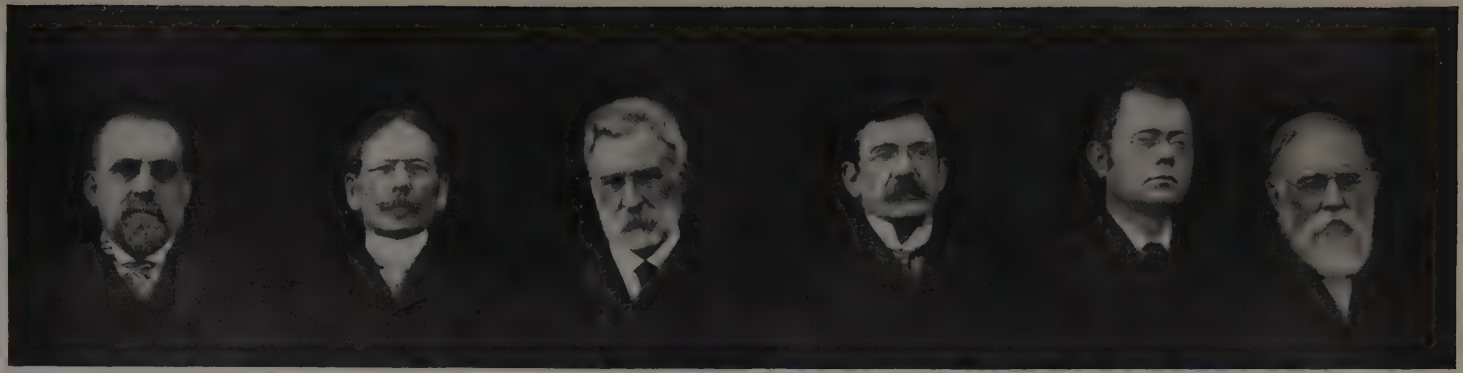
The provision for the admission of persons qualified to enter the senior class of Harvard College was originally adopted as a measure of attainment to be required of men who, without having received a college degree, claimed to be of equivalent education. As it worked out, however, the provision made it possible for Harvard seniors to enter the School without obtaining the degree; and a practice grew up for seniors who had almost completed their college requirements to obtain leave of absence from the College and enter the Law School, where they attempted to do the first year work of the School together with the college courses which were lacking for the degree in Arts. Since the discipline in the Law School was much freer than that in college, a considerable number of men of this type entered the School, though they had no intention of ever becoming lawyers; and even those who were genuine law students were greatly handicapped by the necessity of taking college as well as law school work, and the natural diversion of their energies to the social activities of seniors in college. Statistics compiled after several years' experience of the working of the rule proved that Harvard College seniors, so admitted, were not doing well in the Law School; and in 1900 the privilege was withdrawn. Since that time no persons who have not already received a college degree can be admitted as regular students unless they have completed all the required college work, so that only the mere

lapse of time stands between the student and the degree.

The publication of the list of approved colleges proved a continual source of friction with colleges which did not find a place on the list, and sometimes became an undue cause for boasting by those which had been admitted to it. The Faculty came to feel that since they were not in a position to stand as public censors of college education, the publication of the list of colleges approved by them was unwise, and it was accordingly discontinued.

The number of temporary teaching appointments during the deanship of Ames was far greater than for any previous period, partly because of the increasing enrichment of the curriculum. Valuable work was performed by the following men, whose professional careers deserve fuller mention in another portion of this book, — George Rublee and Henry Walton Swift, who took some of Professor Williston's courses during his illness; Francis Cleaveland Huntington, Frank Beverly Williams, Harvey Humphrey Baker, Charles Benjamin Barnes, Arthur Charles Rounds, Robert Gray Dodge, James Jackson Storrow, Harry Augustus Bigelow, William Rodman Peabody, Joseph Lewis Stackpole, Jr., Rufus William Sprague, Frederick Green, Wallace Brett Donham, Samuel Hudson Hollis, Clarence Harmon Olson, Jeremiah Smith, Jr., Allan Reuben Campbell, Philip Lee Miller, Sanford Henry Eisner Freund, Arthur Atwood Ballantine, Lincoln Frederick Schaub, and John Gorham Palfrey.

Two other instructors afterwards became more closely connected with the School. Ezra Ripley Thayer was appointed Instructor on Massachusetts Practice in 1897–98, when the plan was adopted of offering the two Practice courses in alternate years, and taught four times, until press of business compelled him to decline further appointment. Edward Brinley Adams was Lecturer on Property in 1902–03.



GRAY BRANNAN SMITH WILLISTON WAMBAUGH LANGDELL

WESTENGARD BEALE STROBEL THAYER AMES

THE FACULTY IN 1901

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Charles Frederick Dutch began a long and useful service as instructor in the year 1906. During the next ten years he taught at various times Admiralty, Equity and Property. Mr. Dutch's work for the Law School in hours taken from a busy practice deserves the gratitude of every one interested in the School, and his success in conducting difficult courses in emergencies is worthy of the highest praise.

In the year 1902–03 lectures were given for the first time on Mining and Irrigation. The lecturer in that year and again in 1905–06 was Charles James Hughes, Jr., the chief mining lawyer in Colorado. The course on Mining Law was subsequently conducted by Bancroft Gherardi Davis of the Boston bar.

Several distinguished foreigners taught at the School during this period. In 1898–99 Alfred Venn Dicey, Vinerian Professor at Oxford University, delivered lectures afterwards published under the title "Law and Opinion in the Nineteenth Century." In 1906–07 Paul Vinogradoff, Corpus Professor of Jurisprudence at Oxford, gave a course on Comparative Ancient Law. Walter Neitzel, a German judge, who was studying American law in Cambridge, conducted an interesting series of lectures in 1908 on the German Civil Code.

As the School grew, several permanent professors were added to the group of men who had surrounded Langdell. In the year 1878 George Bemis of the class of 1839 had left a considerable sum of money to the Law School for a chair of Public and International Law. This bequest was subject to a life estate which fell in about 1895. The first appointment to the Bemis Professorship was that of Edward Henry Strobel in 1898. In this same year the Faculty again decided to try the experiment of dividing the first year men, but only in one course. Criminal Law was to be taught in several sections, so that the students might have the advantage of a small class at the beginning of their school work.

In order to help carry out this division Jens Iverson Westengard, who had just graduated, was made instructor in Criminal Law for 1898–99, and next year Assistant Professor of Law. In 1906 Professor Strobel became General Adviser to the King of Siam and departed for the East, taking Professor Westengard with him. When Mr. Strobel died in 1908, Mr. Westengard succeeded him as Adviser, and remained in Siam until 1915. He then returned to the Law School to take the Bemis Professosrhip, which had been vacant since Strobel's resignation. Joseph Doddridge Brannan, who had graduated from the School in 1872 and practiced and taught in Cincinnati, became Professor of Law in 1898. Ten years later he was made Bussey Professor and retired in 1916 after eighteen years of service. Bruce Wyman was appointed Lecturer on Administrative Law upon his graduation in 1900, and three years later Assistant Professor. In 1908 he became Professor and served until his resignation in 1913. Edward Henry Warren, a member of the class of 1900 in the School, was appointed Assistant Professor in 1904, Professor in 1908, and in 1913 Story Professor. Joseph Warren, of the same class, served as Lecturer and Instructor from 1909 to 1913, and was then appointed Professor of Law.

At the time of the Spanish War the question was raised, for the first time in the School since an examination for the degree had been established, of a necessary concession to students engaged in military service. The Faculty felt that the gravity of the occasion justified a relaxation of their very rigid requirements as to examination, and they accordingly adopted regulations substantially excusing all students who were absent on actual service from taking examinations held during their absence. During the riots in Lawrence in 1913 a similar privilege was granted to several students who were called out as members of the Massachusetts militia.

A petition for the admission of a woman to the School was presented in June, 1899. After a long discussion the Faculty voted that if the governing boards of Radcliffe College would admit her as a graduate student, the faculty would allow her to take the courses and examinations. It may be added that Langdell dissented from this vote. Thayer expressed the view of all the others when he said that he should regret the presence of a woman in his classes, because he feared it might affect the excellence of the work of the men; but he could not deny the inherent justice of the claim. The Radcliffe College council were ready to admit the petitioner in accordance with this vote, but the Harvard Corporation, acting as overseers of Radcliffe College, refused their assent.

By 1896 the School had become so large that a Secretary was desirable. Eugene A. Gilmore was appointed, and the position was later occupied by Charles F. D. Belden, Frederic Louis Fischer and Herman Arthur Fischer. In 1909 Richard Ames became Secretary. Besides having charge like his predecessors of work connected with the entrance of students and their standing in the School, Mr. Ames has also undertaken to assist men who are graduating to secure positions in law offices.

The students of the School have seldom cared to take a large part in athletic activities. Indeed, most of the students so suddenly give up the active exercise of their undergraduate years as to present not infrequently a problem of health. But persons who had been prominent on the athletic teams of their colleges before coming to the Law School were sometimes commandeered for service on the Harvard teams. The Faculty of the Law School regarded this as unfortunate. A professional school is a place for work, not for play, and the interruption to work caused by membership on an athletic team was so considerable as distinctly to interfere with the professional progress of the student. In 1904 the Faculty

requested the "Dean to communicate to the Committee on the Regulation of Athletic Sports the opinion of the Faculty that it is desirable to restrict the participation by Harvard students in intercollegiate athletic contests to the undergraduates of Harvard College and the Lawrence Scientific School." The Athletic Committee acted in accordance with this opinion and from that time the students in the School have taken no part in the regular contests of Harvard teams. Now and then they have formed football or baseball teams to play a game or two, and considerable enjoyment has been obtained in that way; but they have not been permitted to enter intercollegiate sports.

When Austin Hall was occupied, in 1883, it was expected to furnish an adequate home for the School for the ensuing fifty years, as Dane Hall had done for the previous half century. The whole past experience of the School justified this expectation. During the forty years from the death of Story to the year 1885 the maximum attendance of students had increased but fifty; but in the following twenty years a sudden and unexampled increase in numbers took place. From 165 in 1885 the attendance rose, with hardly a year's check, to 765 in 1904; a difference of 600, or 364%. The library grew at an almost equal rate. As early as the year 1896 alterations were made by which the accommodations of the School were increased. Before 1902 plans had been made for the enlargement of Austin Hall by adding a stack and professors' rooms at the north end; but the increasing cost of building caused the abandonment of the plans. Within a year the necessity for larger quarters became even more pressing. Many schemes for enlargement of the building were proposed, but all had to be abandoned because of artistic or financial objections. The condition upon which Austin Hall had been given — that no building should be placed within sixty feet of it — made the construction of a

LANGDELL HALL

Built about 1906. The right wing contemplated by the original plan has not yet been built. It will be added when the necessary funds are available. This building contains the bulk of the library with adjoining reading rooms, lecture rooms, and the offices of the Faculty.

second building a difficult problem; but that course was finally adopted, and Langdell Hall was begun in 1905.

No benefactor came forward to present the new building. Fortunately the prosperity of the School had been so great that several hundred thousand dollars had been accumulated as surplus, and this was devoted to construction. Langdell Hall cost, with its furnishings, considerably more than four hundred thousand dollars. Financially, therefore, it caused an increased expense to the School of the interest on this money as well as of the cost of maintenance of the new building. It happened that the University adopted at the same time the reasonable policy of distributing among its departments the general expenses — for overhead charges, library and gymnasium, etc. — which had formerly been borne by the College alone. In consequence of these new financial burdens, the average annual surplus of the School, which had been more than thirty-eight thousand dollars ($38,548.53) for the period between 1900–01 and 1904–05, fell to less than three thousand five hundred dollars ($3435.47) for the period from 1907–08 to 1911–12; or, if allowance is made for certain extraordinary expenditures for books, seven thousand five hundred dollars. There was therefore a loss to the School from these causes of more than thirty thousand dollars a year; a serious matter for an institution so slightly endowed.

In October, 1906, the Faculty began to consider the extension of the school work by the addition of a fourth year of residence. For several years one or two students had stayed after graduation for another year's work in the School. The number of courses offered was greater than could possibly be taken by a student even in four years, and several subjects of a distinctly advanced nature were already offered. After three years of informal discussion the Faculty voted in 1909 to recommend to the Corporation that the degree of S.J.D. (Doctor of

Juridical Science) be given to a graduate of the School who should successfully complete one year of postgraduate work, and to graduates of other schools after two years of such work. The Corporation and the Overseers approved the plan, but modified it by requiring only one year's residence for the degree whether the student had graduated from Harvard or elsewhere. It was provided that the candidate for S.J.D. should have received the LL.B. degree with high rank, and must pass the examinations of the fourth year course with distinguished excellence.

The sudden illness and untimely death of Ames early in the academic year 1909–10 put an abrupt end to the period under examination. Judge Smith, who in 1908, at the unanimous and insistent request of his colleagues, had agreed to serve for two years longer in his professorship, insisted upon retiring at the end of the year. Gray alone remained of the group of great teachers who, under the leadership of Langdell, had created the prestige of the School. The fortunes of the School were now in the hands of younger men, all of them pupils of Langdell and his successors; and the task of supplying the place of such distinguished teachers as Ames and Judge Smith was exceedingly serious. Professor Williston, whose connection with the School had been longer than that of anyone except Gray and who served as Acting Dean till the close of the academic year, would undoubtedly have received the deanship, had not the condition of his health compelled him to decline. The Faculty and the Corporation next turned to a distinguished member of the Boston bar, one of the most brilliant students in the history of the School, who had already made his mark there as a teacher of Massachusetts Practice. Ezra Ripley Thayer was chosen Dean, and the vacant Story Professorship was filled by Roscoe Pound, who had studied at the School 1889–90, practiced law in Nebraska, taught in the Law

Schools of Nebraska and Northwestern Universities, and was then at the University of Chicago.

In the autumn of 1910 Ezra Ripley Thayer entered upon the duties of the deanship. During the half-year of interregnum the Faculty had made several appointments to teaching positions. Upon Dean Ames' illness in 1909, Austin Wakeman Scott, a graduate of that year, was called from practice in New York to be Instructor in Pleading and Equity. The next year he became Assistant Professor and in 1914 Professor of Law. Roland Gray was appointed Lecturer on Property for 1910–11 and twice reappointed.

The Deanship of Thayer

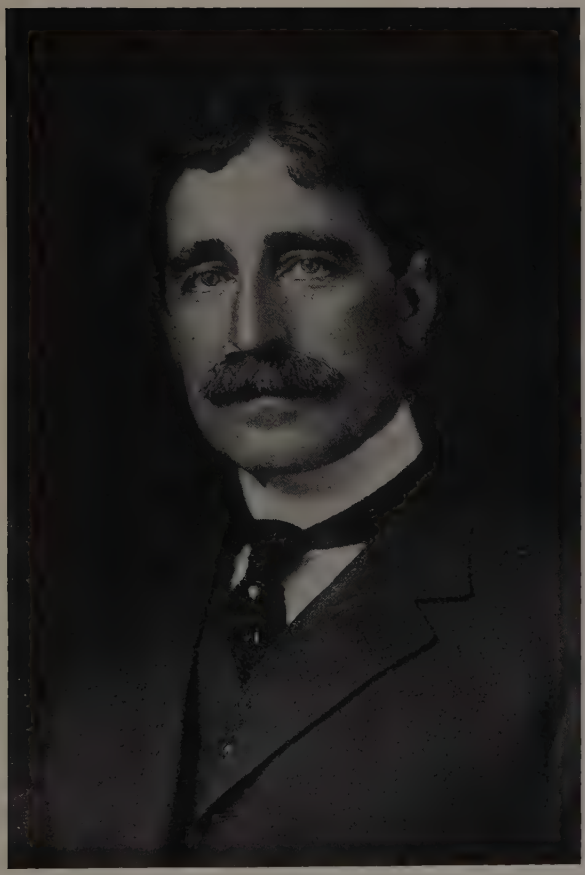
New problems awaited solution. The establishment of a graduate course and of a graduate degree of Doctor of Juridical Science put upon the Faculty the task of developing instruction in a new line of legal thought. The leadership of the School up to this time had been in methods of undergraduate instruction and in the training of youth for service at the bar; it soon appeared that the School was to be pioneer in another field, that is, in the broad and theoretical training of teachers in the science of the law. It was not expected that many students would come to the School to obtain the higher degree; nor was it foreseen to how great an extent these few students would consist of experienced teachers of law desirous of keeping abreast with the latest developments of legal science. As an essential part of their work these men have been employed in the investigation of current problems of law and administration. The remarkable library of the School has thus been made of direct use to the development of learning. And during Thayer's administration the distinction already possessed by the library was increased by the acquisition of several valuable collections of books on special subjects. A full description of these accessions will be found in another chapter. It is, however, proper to

notice them here, because they have led distinguished scholars in several branches of law and administration to resort to the School, and have in this way broadened its influence.

During Thayer's deanship, also, the organization of student life was greatly increased. Two dining clubs were either started or became established; the Legal Aid Bureau began its work. In the spring of 1910 the Faculty had established a Board of Student Advisers, drawn from the third year class, whose duties were to help beginners in the use of books and the preparation of briefs for the discussion in club courts. This board became a most valued instrument for the exchange of ideas between Faculty and students, and furthermore greatly increased the interest in the work of the club courts. With the interest of a fund given by Mrs. Ames to be used at the discretion of the Faculty, a prize competition for the club courts was established and the advisers were entrusted with the administration of this contest. Dean Thayer was greatly interested in its success, attended many of the arguments, aided in the selection of judges, and at all times kept in close touch with its progress.

Thayer entered heart and soul into the work of the deanship which, to him, as to Ames, meant placing himself at every moment at the service of students who were in any kind of trouble or difficulty. To this work he devoted a considerable proportion of his time and thought during the five years of his administration. For instance, he gave an afternoon each week to visiting law students confined to the infirmary.

In 1911 Assistant Professor Scott was offered the deanship of the University of Iowa Law School. He was encouraged by his colleagues to go there for a year and performed valued service. A similar leave of absence had been granted nine years before to Professor Beale, who spent it organizing the Law School of the Univer-



E. R. Thayer

sity of Chicago. Besides the work of this character performed by Harvard Law School professors, a large number of graduates of the School have as teachers spread its methods into law schools all over the United States. Langdell's ideas and standards of scholarship have remained no exclusive possession of Harvard, but have influenced thousands of lawyers who never saw Cambridge or even heard his name.

To fill Professor Scott's place in part during the year 1911–12, Warren Abner Seavey was appointed Lecturer on Pleading. Other temporary appointments during Thayer's deanship were, Odin Barnes Roberts to lecture upon Patents and Lucius Ward Bannister upon Water Rights.

On February 1, 1913, John Chipman Gray resigned on account of ill health, the last as he had been the first of the great teachers who re-created the School. His work was continued through the rest of the year by his son, Roland Gray, and by Robert Dickson Weston of the Boston Bar.

Two permanent appointments were made in 1913–14. When John Himes Arnold retired in September, 1913, and became Librarian Emeritus, his place as Librarian of the Law School was filled by Edward Brinley Adams, then in charge of the Social Law Library in Boston. On January 12, 1914, Felix Frankfurter, Counsellor for the Bureau of Insular Affairs in Washington, was appointed Professor of Law.

Early in 1915 Thayer was attacked by an obscure disease, which not only incapacitated him from work during most of the spring, but resulted in nervous depression of a serious character. He returned to work before the end of the year and conducted examinations in his course, but the strain of the work and the recurrence of his disease resulted in a complete breakdown and in his sudden and lamented death. His service to

the School cannot be measured by the shortness of his office. Like Langdell, he became Dean at a time of sudden change and development; and though he was not destined like his predecessor to see the success of the movement whose beginning he cherished, he powerfully assisted in giving it direction.

In order to conduct the administrative work of the School until the choice of a dean, Professor Scott, whose late experience in Iowa was now of service to the School, was made Acting Dean. A considerable amount of administrative work was assumed by the Secretary, thus lightening the task of the Dean. Professor Thayer's course on Evidence was taken by Arthur Dehon Hill, who was formerly district attorney for Boston, and had a broad experience in the trial of cases and especial interest in Criminal Law and Criminology. The course on Torts was taught by Chester Alden McLain, who had graduated from the Law School in 1915. For the year 1916–17 he was appointed the first incumbent of the Thayer Teaching Fellowship, which had been endowed by Mrs. Thayer after Dean Thayer's death.

During the year Professor Pound was designated as Dean; and the Faculty was strengthened by the retention of Mr. Hill as Professor of Law, and by the appointments of Albert Martin Kales, an advocate at the Chicago bar and also a teacher of law at the Law School of Northwestern University, to a professorship for the year 1916–17, and of Zechariah Chafee, Jr., of the Rhode Island bar, to an assistant professorship. At the same time Mr. Brannan retired after eighteen years of service and became Bussey Professor Emeritus.

It is a far cry from two small rooms in an old dwelling-house to the two imposing and monumental buildings which now house the Harvard Law School; or from the solitary student of 1817 to the eight hundred of to-day.

Yet, striking as has been the material progress of the School, its intellectual development is no less surprising.

The first half century was throughout a time of experiment. The School was a pioneer in a new and difficult task, and able men devoted themselves to that task, and succeeded. But with Langdell a new order of things began. From his coming there has been an unbroken tradition of legal scholarship, and the School has been not merely a law school, but the repository of a distinctive legal science; it has created its own standards of common law. This body of scientific thought, professed by the teachers and apprehended by the pupils, has come to be known, in student vernacular, as "the common law of the School." To its development Langdell brought first-hand study and logical precision; Thayer, depth of scholarship and historical insight; Ames, an ever increasing ethical and social element, and the fundamental conception of the entire law as a single thing, divided only for mere convenience into topics; Gray, the matured sanity and judgment of a man of affairs, and precision and elegance of statement; Smith, wide experience in the application of law and an illuminated common-sense which checked the excess of mere theory. Ten thousand students have contributed the energy and eagerness of youth, and knowledge of life in every part of the country. Incessant class-room discussion and argument among students out of class have wrought the fabric; and the *Law Review* has formed an organ of expression. The result has been the development of a complete and scientific conception of the common law such as no other institution or body of men has had the opportunity of creating.

CHAPTER II

INSTRUCTION

Methods of Instruction

LEGAL education, at least so far as our civilization is concerned, has been carried on in one of four ways. The most primitive is the method of apprenticeship; the young man learns his law by sitting for many years in court, watching the administration of justice. It is thus that the traditional justice of the folk-mote recruited its ministers, in Greece and Rome as well as in ancient England. This method continued after the folk-law had been succeeded by the "judge-made" law of a professional tribunal. During the Middle Ages the students outside the bar took note of what was doing in court, and digested their notes under alphabetical headings; creating in this way one of the earliest forms of law book, the so-called Abridgment. The judges themselves condescended to notice these students, and to explain the more obscure processes of justice.

After a time this haphazard system of studying law was supplemented and at last superseded by a more finished method. Some lawyer, learned in a certain subject, presented to the students in a set lecture, or in a treatise, the whole law on his particular topic. From the later Middle Ages to the present day the readers of the Inns of Court have been delivering lectures on branches of the law; and during the same period treatises have been placed before the profession for the

information of those who would learn the law. In the history of the Roman law, Justinian's Institutes form a general treatise of this sort; while in our own legal history the foundation of the Vinerian Professorship at Oxford, and its first-fruits, Blackstone's Commentaries, furnish the classic example of this method of instruction and of the lecture-treatise which it produced.

As treatises multiplied, a third method came into use; comment by the teacher on a text in the student's hands. This was the method pursued in the mediæval schools of Italy. Accursius, Bartolus, and their successors glossed or commented on the text of the *corpus juris*. The system of teaching by lectures tended toward this third method, as lecturers published their treatises, and either commented upon them afterwards themselves or provided them as material for the comment of others. From the publication of Blackstone's Commentaries to the publication of Langdell's Cases on Contracts, this was the prevailing method of legal instruction in America, and it still survives in the "textbook schools."

The fourth method trains the students in legal investigation through a first-hand study of judicial decisions and other sources, and tests by class discussion the results of this investigation.

At the Harvard Law School the last three methods have been successively tried. Stearns, Story, Ashmun, Greenleaf, and Washburn in particular, made more or less use of the lecture method; though as each printed in a treatise or treatises the result of his investigations, the usual evolution into instruction by comment took place. James Bradley Thayer lectured for many years on Constitutional Law. Gray used the lecture as a means of imparting instruction later, more aptly, and more successfully than any of his predecessors; but he finally abandoned it for the Langdell "case system." The method of comment, used by all the earlier teachers,

became in the hands of Joel Parker and Parsons the typical system. James Bradley Thayer was the latest to employ this method in undergraduate teaching; although in his later years Langdell's own method of class instruction took the form of comment on the cases, because his diminishing eyesight made the conduct of discussion impossible to him. But the greatest service of the School to the development of legal instruction has been rendered in the invention by Langdell, and the development by his successors, of the fourth method of instruction, the so-called "Langdell" or "case" method.

This is not the place, even if it might conceivably be still desirable, to explain or defend the case method of instruction. Many articles have been written in favor of the system and many attacks have been made upon it by those not familiar with its operation. The only final answer to such attacks is the success of the method in actual use, as shown by the record in practice of students trained under it. A list of such students who have attained distinction in various branches of the profession is a sufficient defence of the method. It must be granted that in order to insure its success, it must be used in a school which purports to teach the law not of a particular state, but of the entire United States; and it must be employed by professional teachers chosen, not for their skill in the practice of law or even on the bench or in writing treatises, but for legal scholarship and the ability to make men think. How the situation at Harvard has met these requirements will be presently shown. It must be admitted, furthermore, that the progress of the student in the school appears to be slower than under other systems of instruction, for the reason that the attempt is made not merely to convey information but to stimulate thought, to correct mental habits and to create in the mind of the student the mental

equipment and modes of thought of the sound lawyer. The student instructed by this system may leave school ignorant of the rules developed in important branches of law, for three years' study is too short to make a man master of every branch of a complex and rapidly growing science. He ought, however, to be so trained that he will never be at a loss to find the required law and apply it to facts set before him, and this, after all, is the essential task of every lawyer in every branch of the profession. The perfection of technique in teaching which has been progressing at the Harvard Law School since 1870 has made it possible to instruct in a most difficult science classes of students of a size undreamed of, even a generation ago, and to give them such mastery of that science that they are at once prepared to cope with the greatest lawyers at the bar in the discussion of all questions involving intellectual knowledge of the law. This extraordinary result could only be attained by the use of a scientific system of instruction employed by professional teachers in the teaching of an already highly educated student body.

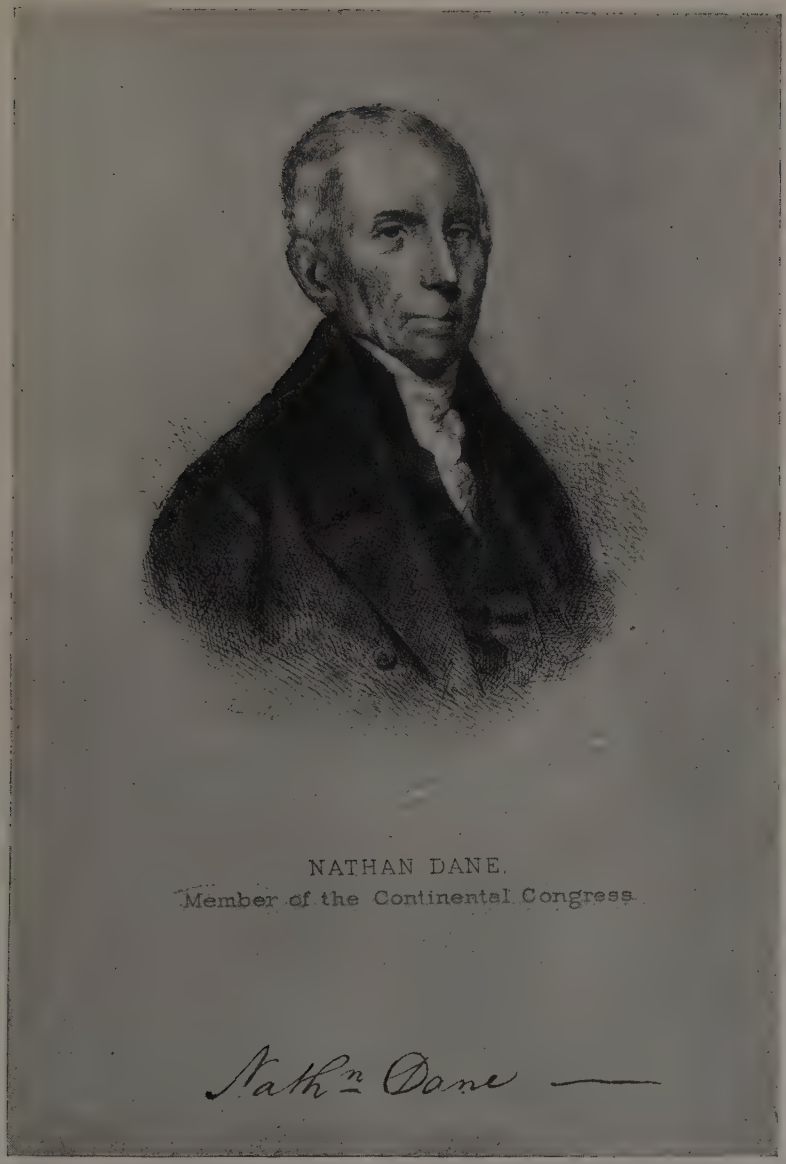
Cosmopolitanism

A characteristic quality of the Law School from the beginning of its history to the present time is its cosmopolitan character. In the first five years of its history, out of forty-one students, less than one-half were from Massachusetts; they came from eight states, including Maryland, Virginia, and South Carolina, and from seven colleges.

This fact, no doubt had its bearing on the character of the law taught in the School. It had been the custom to teach in an office to a few students the law of a particular state; and though in each state a few English law books were found, all the knowledge that supplemented these books was knowledge gained at a particular bar, or out of the few reports of the state which might previ-

ously have been published. There were in 1817 over one hundred volumes of American reports accessible to lawyers; and at least one-half as many in 1812. Yet a set of lectures delivered in 1812–13, at the Litchfield Law School, full of references to English books, contains a very few references to Connecticut Reports, and none or almost none to those of any other state. Such a course could hardly have been possible at Harvard, where the majority of students were not intending to practice in Massachusetts. Stearns' Real Property, published in 1824, which was no doubt a transcript of his lectures, contains numerous references to the reports of the various states. An examination of five pages, taken at random, shows three citations of reported cases from New York, and one each from Massachusetts, Pennsylvania, Maryland, Virginia, South Carolina, the Supreme Court of the United States, and England.

Meanwhile the Supreme Court of the United States had been building up a jurisprudence which was identical throughout the country. The "law of nature" (which meant the general reasoning of common-law lawyers), international law, commercial and maritime law, Federal law and Federal equity, "formed a common element of law in all the states." Instead of the common law of England, a common law of America was forming and the consciousness that their law was after all identical in its principal features was taking possession of the bars of all the states. When Dane founded a professorship for a member of that Supreme Court which was the greatest agency in this new fellowship, he provided that the professor should teach no particular law but rather that which was common to America. "Branches of law and equity," he stipulated, "the most important and the most national, that is, as much as may be, branches the same in other states of the Union as in this; making lectures on this state law useful in more states than one; law clearly



NATHAN DANE

A member of the Continental Congress, the draftsman of the Ordinance of 1787 for the government of the Northwest Territory, author of Dane's "Abridgement," the profits of which he devoted to the Harvard Law School in 1828 in order to establish the School with Joseph Story at its head. (*From an old print.*)

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distinguished from that state law which is in force and of use in a single state only."

Since Dane's time his principle has been strictly carried out. Through all changes of method and of policy, the School has held fast to the teaching of the general common law. Other schools have claimed to be better adapted to train lawyers for the bar of a particular state because they taught the local law and practice of that state; but they have either disappeared or changed their policy. The insistence of Harvard that the best training for a lawyer is a study of the common law as a scientific system, and that the study of a particular law only tends to make narrow and unenlightened practitioners, seems to be established in the Supreme Court of Experience. The effect of this policy, accepted as it has been sooner or later by most other schools, upon the body of American law, is incalculable. When the best-trained lawyers at the bar have been taught to think of the fundamental law as the same throughout the country, and to regard the decisions of all common-law courts as of persuasive authority, the result has been a strong tendency to unity in the particular laws of most states, counteracting the centrifugal forces which if left to themselves would have split the country into fifty distinct kinds of law. The victory over separatism, though assured in most law schools, is by no means won in the courts; but the growing emphasis on uniform legislation and uniform construction of such legislation and the realization of the waste, delay, and confusion caused by a multitude of conflicting decisions on the same question in the same nation, point to an eventual fulfilment of Story's desire for the prevalence of general principles of commercial law throughout the United States.

Dane expressed the belief that the best teachers of law would be judges or lawyers in practice, and he showed

his confidence in this view by procuring the appointment of Judge Story. This was an extremely happy choice for securing the establishment of the Law School; but Story himself continually lamented that his teaching suffered because of the length of time he was obliged to spend in his judicial duties. More than once he seriously contemplated resigning from the bench in order to do justice to his work in the School. Indeed, he actually did so a few weeks before his death. Greenleaf engaged in practice while he was teaching. This he felt to be necessary because of his small salary, but he was constantly expressing the need for another professor who could give his entire time to the School. The disadvantages of a practicing Faculty were deeply felt when both Story and Greenleaf were absent for several weeks, leaving the School in the untrained hands of a temporary instructor. This experience of the School with teachers who had outside interests was so convincing that for thirty years after the death of Story no one was appointed who did not devote all his time and energies to the work of the School, and for three-quarters of a century this has been the settled practice. The result upon legal education not only at Harvard, but throughout the United States, has been most important, for the example of Harvard has sooner or later been followed by every school of consequence in the country. As a result, the teaching of law has become a profession and methods of instruction have been developed immensely more efficient than any which are possible when teaching is a mere by-product of practice.

Professional Teachers

A consequence of professionalizing legal instruction has been a change in the type of teachers. Before 1870 they were almost without exception appointed after several years of practice and usually not until they had gained a reputation at the bar. Story's request for the promotion of Sumner to a professorship was denied, partly no doubt

because he was then a young and unknown lawyer who had not yet made such a name for himself as seemed to justify his nomination. With the selection of Ames directly after graduation from the School a new order of things began. "The gentleman who is to bear the brunt of this new experiment in the constitution of a law faculty," said President Eliot, in his report to the Overseers, "has some unusual qualifications for the place; . . . the experiment will therefore be tried under favorable conditions. It will doubtless prove that young teachers can do very useful work in the Law School as well as in the College, the Scientific School, and the Medical School; indeed, it would not be surprising if they could do a portion of the work of instruction better than older men." Ames' immediate success as a teacher, a success which far surpassed that of his predecessors, showed the practicability of the experiment. In fact, a man of mature age, who has for many years been in practice at the bar, changes his habits with some difficulty. He has become used, as has been shrewdly said, to making himself a temporary specialist in a narrow field, and finds it hard to adapt his mind to the quite distinct profession of the teacher, whose field must be the whole law. Although such men have become distinguished teachers, nevertheless the appointment of a fair proportion of young men, without long experience in practice, has proved advisable in most American law schools.

This new policy has been the more successful because of the change during the century in the conception of law. Before the foundation of the Harvard Law School, law had been looked upon as a trade, and such teaching as was given was rather the instruction which a master gives to his apprentice than instruction in a real science. Story, himself trained in the old system, had felt its inadequacy and at the outset of his service expressed the need of a different method. "The law," he felt, "should

be taught scientifically." In the generation that passed between his time and Langdell's the systematic character of law was emphasized, and Langdell's declaration as to "proper scientific instruction" is well known.

If it be granted that law is to be taught as a science and in the scientific spirit, previous experience in its practice becomes as unnecessary as is continuance in practice after teaching begins. It is common knowledge that a student upon graduation from a law school has a better grasp of the law as a whole than a lawyer whose practice at the bar has for many years been developing his mind toward the highly detailed study of particular questions or the accumulation of isolated sets of facts. The intellectual disadvantages of law practice have been graphically summarized by one of the greatest American advocates, Horace Binney. "This indeed constitutes the great drawback from the profession of the law, not merely that the life of a lawyer has great sameness, but that the investigations which cost him the most time and labor do not in the slightest degree increase his stock of useful knowledge. . . . The lawyer's facts are unproductive of all benefits, except to the fortunate client. When the cause is tried, the facts are of no more importance to the lawyer himself than last year's price of calico, nor to the rest of mankind perhaps half so much. . . . The more causes he has tried, the more time has he lost. The more facts he has investigated the less he knows."

After twenty years of such a life a man may easily be a much poorer teacher than if he had spent the same time in the study of the general principles of the law. The teaching of law being purely intellectual, the requirements for a successful teacher are intellectual requirements only, and experience in practice is not an absolute necessity. Practically no school would feel it wise to appoint a faculty made up entirely without experience at

the bar, and that has certainly never been done at Harvard. On the other hand, a school conducted chiefly by persons drawn from the bar after many years of practice would lack the scientific intellect and the command of technique in teaching which must be found in any successful school.

The Curriculum

In the first period of the School no such set schedule of studies as could properly be called a curriculum existed. Professor Stearns gave a few lectures "embracing a general course of legal instruction, in which those parts of our system of jurisprudence in which we do not adopt the law of England are particularly noticed." He also held recitations "in several of the most important textbooks," conducted a moot court and debating club, and required written dissertations.

At the beginning of the second period little change was made. The student still met the professor for "recitation and examination" in several legal treatises, the number of which rapidly increased during the period. Dane had proposed that his professor should prepare and publish courses of lectures on five subjects. Story did prepare and publish a number of treatises, which were afterwards used as the basis of instruction; but apparently he never did anything so systematic as deliver a course of lectures upon any particular subject.

When Greenleaf succeeded Ashmun, there appears to have been no immediate change; but according to accounts of students Greenleaf's lectures were more formal and carefully prepared, and gradually developed into discourses upon special topics, illustrated by treatises, instead of mere comment on specified texts. Upon Story's death, and the subsequent appointment of Kent, a change occurs in the form of announcement of the course of instruction. Courses of lectures on particular subjects of the law are now announced, together with the

name of the teacher of each course. The names of the books studied is also included, as before; but for the first time in the history of the School the course in the modern sense, and not the textbook, is the unit of teaching. Thus, in the Catalogue for 1845–46, the announcement of studies is made in the old form, "The following books are read with the Dane Professor." In 1846–47 it runs, "The following studies are pursued with the Dane Professor." A similar alteration is made in the report to the President. It would be interesting to inquire whether this change was due to the gradual development of Greenleaf's system, or to the previous experience of Kent, who is described as "since 1838 Professor of the Law of Persons and Personal Property in the Law School of the University of the City of New York," and must therefore have been familiar with the subject-course.

A curriculum, then, came into existence in the year 1846. It consisted at that time of three distinct parts:

1. An elementary course, given each year, comprising a study of Blackstone's and Kent's Commentaries. For the first year it was conducted by Professor Kent; in 1847–48 by Professors Greenleaf and Parker; and thenceforth for 22 years by Professor Parsons, until it was abandoned in 1870.

2. Several fundamental courses, taught substantially every year during the ensuing third period of the School. These were Real Property, Equity, and Constitutional Law.

3. A number of other courses, regarded as less fundamental, which were offered at intervals during the period; theoretically in alternate years, though sometimes a course was given two years in succession and sometimes more than one year elapsed before it was repeated. The courses given in such alternation at the beginning of the period, with the number of times they appear to have been taught, according to the President's report, are as follows:

DANE HALL — LECTURE ROOM

Name of Course	No. times given before 1870–71
Pleading	15
Bills and Notes	14
Domestic Relations	14
Evidence	14
Shipping and Admiralty	14
Bailments	13
Wills and Administration	13
Partnership	12
Insurance	11
Sales	11
Agency	10
Contracts	9
Corporations	7

In addition, four similar courses were added to the curriculum during the period:

Arbitration (1850–51)	6
Criminal Law (1853–54)	9
Bankruptcy (1854–55)	9
Conflict of Laws (1855–56)	7

These courses, in the three classes, may be regarded as regular courses. There were in addition special courses, given from time to time as occasion served, as follows:

Parliamentary Law (1848–49)
Civil Law (1848–49, 1850–51)
Currency (1860–61)
International Law (1863–65, 1866–68)
United States Jurisprudence (1869–70)
Writs of Error (1866–67)

All these subjects were offered to all students, without distinction as to class.

With the advent of Langdell came an entire change in the curriculum, as well as a division between those courses which should be taken in the first year of law study, and those which, being more advanced, should be taken later. Of the four subjects given every year, the elementary

course and that on Constitutional Law were dropped. Equity was shifted to the second year. Real Property was continued as an elementary course. Pleading, which had been given pretty regularly, became also a first year subject. The other courses in the first year were Contracts and Criminal Law, irregularly taught before, and Torts, which was entirely new. These five courses have constituted the work of the first year, or the greater part of that work, from that day to this.

The advanced work at first comprised courses that belonged to the earlier period,— Equity, Evidence, Corporations, Wills, and Constitutional Law. To these was added a modern course on Sales, never afterwards omitted. But in a few years advanced courses in the modern form were established. These were Equity (1873), Evidence, Trusts, Property, Bills and Notes (1874), Partnership and Corporations (1875), Agency and Carriers (1876). Other courses were brought into the curriculum as follows: Constitutional Law (1879); Conflict of Laws (1879; omitted from 1888 to 1892, and thenceforth a regular course); Wills (1880–1889, when it was merged in second year Property); Suretyship and Mortgage (1882); Persons (1882); Quasi-Contracts (1886); Corporations, as a separate course (1890); Carriers, which had been dropped as part of the Agency Course in 1885 (1891); Insurance (1893); Damages (1893); Bankruptcy (1898); International Law (1898); Admiralty (1900); Municipal Corporations (1907); Restraint of Trade (1916). In 1899 the course on Carriers was announced as including the law of Public Service Companies. The course on Bailments given in alternate years before 1870 has never been offered since that time as a separate topic.

Several special courses, or courses given at irregular intervals, have been offered since 1870. These are Jurisprudence (in 1872, 1879 to 1883, 1896 to 1901, 1908 to

date); United States Jurisdiction (1872, 1886 to 1891, 1916); Legal History (1886, 1887, 1894, 1912 to date); Roman Law (1897, 1910 to date). A short course on Statutes formed for a few years part of the course on Persons; and an advanced course on Contracts was offered for a few years.

Besides the regular subjects, a number of courses not counting towards the degree have been given from time to time, Massachusetts and New York Practice, Patent Law, Mining, and Water Rights. Several special courses of lectures have also been offered; but these cannot properly be regarded as part of the curriculum. Moot courts on kindred disputations were either required or elective until finally abandoned in 1897.

The graduate courses now offered to candidates for the degree of S.J.D. include Roman Law, and the Principles of the Civil Law and Modern Codes as developments thereof; International Law as administered by the Courts; International Law Problems of the European War; Private International Law; Jurisprudence, with especial reference to problems of law reform in America; Administrative Law; Modern Developments in Procedural Law; Penal Legislation and Administration; History of the Common Law; and Introduction to the Year Books. The course in Roman Law is required for the advanced degree. The candidate must take two additional hours a week of graduate courses. but beyond that is free to elect subjects open to undergraduates if he wishes. Most of the graduate courses are taught without a case book or textbook, and consist largely in the investigation of special topics.

During the whole history of the curriculum it is interesting to note that some courses have been taught for a long period of years by the same person, while others have had no such continued tradition. It is also interesting to note that no teacher in the sixty-five years

under consideration has confined himself to two or three subjects; even those who were identified with one or two courses have from time to time taught several others.

Of the group before Langdell the following persons taught the same course more than ten times:

Blackstone and Kent, Parsons, 22 times.
Property, Washburn, 22 times.
Equity, Parker, 20 times.
Constitutional Law, Parker, 17 times.
Pleading and Practice, Parker, 13 times.
Shipping and Admiralty, Parsons, 13 times.
Bills and Notes, Parsons, 12 times.
Evidence, Parsons, 11 times.
Bailments, Parker, 11 times.
Criminal Law, Washburn, 11 times.
Domestic Relations, Washburn, 10 times.
Insurance, Parsons, 10 times.
Partnership, Parsons, 10 times.

Washburn, whose work on Property was one of the two principal books published at the School during this period, taught the subject 22 times; while on the other hand, Parsons, whose Contracts was the other treatise of importance, taught that but nine times.

In the period from 1870 to 1917 the following courses have been taught fifteen times or more by the same teacher:

Property, Gray, 35 times.
Trusts, Ames, 31 times.
Evidence, Thayer, 27 times.
Equity, Langdell, 26 times.
Contracts, Williston, 24 times.
Agency, Wambaugh, 24 times.
Conflict of Laws, Beale, 24 times.
Criminal Law, Beale, 23 times.
Constitutional Law, Thayer, 22 times.
Pleading, Ames, 22 times.
Sales, Thayer, 21 times.

Insurance, Wambaugh, 21 times.
Torts, Smith, 20 times.
Bankruptcy, Williston, 19 times.
Partnership, Ames, 18 times.
Sales, Williston, 18 times.
Bills and Notes, Brannan, 18 times.
Partnership, Brannan, 17 times.

But teachers who have taught one subject many years have also, as a rule, either before confining their attention to one or two courses or while they did so, taught a considerable number of other subjects in various branches of the law. Thus the teachers named in the foregoing list have at some time, in the Harvard Law School or in some other law school, taught the following subjects:

GRAY: Property (I, II, and III), Bankruptcy, Evidence, Agency, Partnership, Persons, Conflict of Laws, Constitutional Law, Carriers, Sales, U. S. Courts, Jurisprudence (14 courses).

AMES: Trusts, Pleading, Partnership, Torts, Sales, Bills and Notes, Contracts, Equity (II and III), Quasi-Contracts, Admiralty, Suretyship, Legal History, Corporations, Persons (15 courses).

THAYER: Evidence, Constitutional Law, Criminal Law, Trusts, Agency, Carriers, Sales (7 courses).

LANGDELL: Equity (II and III), Suretyship, Mortgages, Pleading, Sales, Bills and Notes, Contracts (8 courses).

WILLISTON: Contracts, Sales, Bankruptcy, Pleading, Bills and Notes (5 courses).

BEALE: Criminal Law, Conflict of Laws, Carriers, Damages, Property (I and II), Pleading, Evidence, Equity II, Liability, Legal History, International Law, Jurisprudence, Contracts, Suretyship and Mortgages, Municipal Corporations, Criminology (17 courses).

WAMBAUGH: Agency, Insurance, Pleading, Contracts, Property I, Quasi-Contracts, International Law, Equity (II and III), Bills and Notes, Evidence, Corporations, Roman Law, Legal History, Study of Cases, Constitutional Law (16 courses).

SMITH: Torts, Agency, Corporations, Persons, Statutes (5 courses).

BRANNAN: Bills and Notes, Partnership, Damages, Bankruptcy, Torts, Evidence (6 courses).

It is clear that a teacher becomes better equipped to teach a subject the longer he teaches it, in the indispensable qualities of knowledge, clearness of conception, certainty of grasp, mastery of detail, and technique. On the other hand, since no part of our law has developed independently of the rest, no teacher can teach as well as he ought without a wide knowledge of those subjects of the law which lie outside his particular field of study; a knowledge which can most effectually and scientifically be gained by teaching. The experience of the Law School seems to prove that a teacher of law ought to devote the greater part of his life to the study and teaching of one or two special subjects; but that he should also at some time give a number of courses on other branches of the law.

The Evolution of the Case Book

The first case book prepared for use in teaching was Langdell's Cases on the Law of Contracts, published in 1871. This collection of cases covered only a few topics in the law of Contracts; and upon each topic covered all the important English cases were reprinted in chronological order, followed by American and Scotch cases. One argument of a great French lawyer was included, to enforce a doubtful point. An index was added. As conducted by Professor Langdell, the principle deduced by the first case was followed chronologically through its developments and applications in the later cases, until by constant iteration all doubt or forgetfulness was removed. This process, slow-moving but irresistible, like Langdell's own mind, was caviare to the general, and his successors did not carry on a course at so slow a rate.

A partial collection of cases on Sales of Personal Property followed in 1872, but was never finished. The cases were selected upon the same principle, and the Index was so full as practically to constitute a short treatise on the subjects covered.

AUSTIN NORTH

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DALLAS, TEXAS

In 1878 appeared his Cases on Equity Pleading, his first completed collection; and in 1879 the second edition of his Cases on Contracts. Both these collections were followed by summaries of the law covered, concise but profound, which have been useful to lawyers as well as to students. It has usually been felt that too much help was thus given to the student by these summaries; and with the exception of Ames's Cases on Bills and Notes, which had an elaborate exposition index, and Beale's Cases on the Conflict of Laws, the later Harvard case books contained no summary.

Langdell's case books were published by Little Brown & Co. The first books prepared by one of his colleagues were Ames's Cases on Torts, published in 1874, and his Cases on Pleading, 1875. Ames printed and published these collections himself, being unable to find a publisher willing to undertake the burden; and with the exception of his Cases on Bills and Notes (1881) he pursued the same course throughout. It was Ames who really fixed the type of case book in American law schools. His decisions were chosen, not with a purpose of tracing by slow steps the historical development of legal ideas, but with the design, through the selection of striking facts and vivid opinions, of stimulating the thought of the student, and leading his mind on by one step after another until he had become familiar with the fundamental principles of the subject and the reasons for them. Ames himself worked out one or two foundation principles in each topic, guided the class in its discussions to the adoption of these principles, and then used them for the solution of every problem that arose. His method became, at least for his pupils, the typical method of teaching by cases: Keener followed it, and later Wambaugh, Williston, Beale, and their younger colleagues It may well be said that it was the very wide use of Ames' nine case books that established the case

system in other law schools, and this wide use, quite unexpected to Ames, of books which he perforce published for himself, led to his realizing considerable profit from their sale.

Until 1888 these books of Langdell and Ames were the only case books in use in American law schools; but in 1886 Gerard Brown Finch had compiled for the use of students in the English universities a collection of Cases on Contracts after Langdell's method. In 1888 Gray, who had been teaching Property by lectures, brought out the first two of his six volumes of Cases on Property; and Keener issued a two-volume collection in Quasi-Contracts. In 1892 Thayer published his Cases on Evidence; in 1893 Smith added a volume of Torts to Ames' first volume. Every teacher in the Harvard Law School was now teaching in at least one course from his own collection of decisions; Langdell's case was won in his own school.

At almost the same time the use of case books began to spread to other schools. Wambaugh, a graduate of the class of 1880, went in 1889 to the University of Iowa, where he introduced the system; and in order to teach the use of reports published his Study of Cases (1892), consisting of an introduction, followed by cases on two or three subjects for analysis and discussion. Keener went in the next year to Columbia, where in 1891 he reprinted Finch's Cases, together with the pertinent portions of Leake's Digest. Since this experiment of a modified form of the case system did not prove satisfactory, he returned to the old form in his later collections.

At Harvard meanwhile, in 1891, Chaplin published a volume for Criminal Law, which was succeeded by Beale's book on the same subject in 1894; and since that time collection succeeded collection until every subject taught was covered.

The first case book of outside origin used at Harvard

was McClain's on Carriers (1894), which incorporated suggestions by the teacher of that course at Harvard and was used by him. The earliest books prepared without direct influence from Harvard were Huffcutt and Woodruff's Cases on Contracts, 1894, and Pattee's Illustrative Cases on Contracts and on Personal Property in 1893. In the latter year was also published Snow's volume on International Law, for the use of college students. The increasing sale of these books had attracted those alert publishers, the West Publishing Company, and they entered into competition for a share of the trade. They first proposed to buy the copyright of the Harvard case books; but being unable to do so, they issued successively three series of case books for the use of law schools. Their example was quickly followed, and from the year 1895 the multiplication of case books became more and more rapid.

There can be no doubt that this is for the good of legal education. Every teacher of law has his own way of teaching, which is the best way for him; he needs to select his own topics, make his own analysis, and choose his own cases. Now that the case system of instruction has been adopted in substantially all the large and important law schools, a multiplication of case books is a desirable phenomenon.

Practice Courses

The question of how, and how far, practice should be taught in a law school is one of the unsettled questions of legal pedagogy. There are those who claim to be able, through practice courts, to teach a student as well as he could be taught in an office. The Harvard Law School, while admitting that this can be done, has always taken the position that it would be done at too great an expense, since it would involve the use of time that could much more profitably be spent in learning the science of law. The belief of the School

is that law can be studied as a science and in its entirety only in a law school, while practice may be more quickly and effectively learned outside the school. The precious hours of school instruction should therefore properly be devoted to other learning.

There are, however, certain portions of local law and practice which a student must learn before his admission to the bar; and since it is often desirable that a student be admitted at once upon his graduation from the Law School, the School has felt it a duty to offer such instruction as may be necessary to students who intend to apply in Massachusetts or in New York. The practice of other states is not taught in the School, first, because the number of students intending to practice in any other state is not so great as to justify the expense of a special course; second, because Massachusetts and New York may be regarded as duplicate types, the one having the Common Law and the other the Code practice. It is common for students who intend to practice in other states to form clubs in which the local practice of their state is studied. This, however, is outside the regular curriculum.

The courses in Massachusetts Practice (begun 1890) and in the New York Code of Procedure (begun 1892) have been given in alternate years since 1896. They are conducted entirely by lectures and demonstrations and include not merely practice in the narrow sense of the term but some instruction in peculiar statutory procedure, such as poor debtor process, liens, and so forth. This instruction has proved sufficient to enable students to pass their bar examinations; and while it is true that the young graduates of the School have been criticised from time to time for not knowing the way to the post-office or not understanding the mechanics of the short trial list, these defects are easily remedied by a few days' experience.

Efforts have been made from time to time to give stu-

dents some experience in the trial of cases by substituting a trial of the facts before a jury for the argument of questions of law, whether in the law clubs or in the obsolete moot court. Interesting experiments have been made in acting out a legal injury and summoning the witnesses of the event to testify; and on the other hand in coaching witnesses on the points of actual testimony in their reported trial and having them reproduce the testimony in the Practice Court. Such experiments have been more successful in affording amusement than in substantial benefit to the participants. A fact trial now and then is well worth while, but only as a relief to the tedium of serious work.

Of late years no effort has been made by the Faculty to teach practice except through the regular courses already mentioned. The organization of the Legal Aid Bureau, hereafter described, has given to the students concerned in it a very efficient training in the actual workings of Massachusetts procedure.

between 1723 and 1817, but they were largely books of the civil law — meagre and indigestible provision for the infancy of a school founded to train lawyers in the common law. The Corporation immediately authorized $500 to "be expended for purchasing law books by the Treasurer joined to the Professor of Law." John Howe added $100 more, and the Professor of Law spent $81.74 more than these two appropriations, a sum which was subsequently made good to him. A year later the Corporation voted that "the University Professor of Law be authorized from time to time to receive from the College library into his custody such law books as a committee of the Corporation appointed for the purpose shall think proper, said Professor to give a receipt and be accountable for the same and to return them when required." Stearns had done what he could with $681.74 to purchase "a complete law library," but he seems to have felt that his collection, if it was to make even a distant pretense of deserving that generous description, must contain many more books than he could buy with the paltry sum at his command. Accordingly, he removed from the College library to his office in College House as many law books as he could find and was permitted to take. The Committee of the Overseers to visit the library grew uneasy. Only a year later it reported: "By finding so very large a number of law books removed from the library, the Committee, with great deference, would inquire whether this accommodation granted to a particular department may not establish a precedent which shall lead professors in other branches not merely to solicit, but with the greatest propriety to expect, a like indulgence, and this be the means of parceling out the library into private houses, beyond the care of the College librarian and the use of those who apply for books." A Committee of the Corporation reported in a similar strain. Meanwhile,

Professor Stearns received no more money with which he could buy books directly for the library in his office. A few lawyers of distinction recognized that the infant needed nourishment, and occasionally fed it books. The Hon. Christopher Gore gave to the College, for the use of the law students, most of the law books he had collected, including many that had formerly belonged to great lawyers like R. Auchmuty, James Otis, Jeremiah Gridley, and Samuel Sewall, and contained their autographs. He also gave a manuscript copy of some of the opinions and judgments of the Commissioners in prize matters, of whom he was one, who had sat under the provisions of Jay's Treaty. The Hon. Daniel Chipman of Vermont gave his Essay on Law of Contracts for the Payment of Specific Articles. The Massachusetts Historical Society gave eighteen volumes of its Collections; Judge Jackson presented a book or two, and Caleb Cushing gave an edition of Pothier on Maritime Contracts which he had translated. Professor Stearns kept his own books on the same shelves as those belonging to the School and lent them freely to the students. The library in his office, small as it was, soon fell into inextricable confusion. Part of the books belonged to him, part belonged to the College, part had been given or lent by the Commonwealth of Massachusetts, part had been given to the College for the use of law students, and part had been purchased for the School with the original fund appropriated by the College and the donation of John Howe.

Although the books were few, the need of a catalogue was already felt. There was no money to publish an official catalogue and in 1826 two students (one of them a son of the Professor) prepared a catalogue and printed it for circulation among their fellow-students. In one of the copies of this catalogue now in the School's library a sign has been written in ink opposite each title. These marks, according to a statement on the fly leaf, indicate:

1. Books presented by Hon. Mr. Gore.
2. Books removed from the College library.
3. Books remaining in the College library.
4. Books belonging to the University Professor.
5. Books purchased by the Professor and to be paid for out of the Makepeace debt.
6. Books purchased in 1817 and 1819 with funds furnished by the College, with one donation of $100 from the late Mr. John Howe of Boston.
7. Books given by a resolve of the Legislature obtained by the Professor in 1818.
8. Books missing.

This catalogue contains 587 titles. Of these 135 belonged to the Professor and 41 remained in the College library. There were many duplicate entries, *e.g.*, Attachment, Treatise on, by T. Sergeant and Sergeant, Thomas, on Foreign Attachment; Laws of New York, 2 vols., Albany, 1802, and New York, Law of, 2 vols., Albany, 1802. About a dozen titles were marked as missing. The Professor took with him his private books when he resigned early in 1829, and the books "removed from the College library" and those "given by a resolve of the Legislature obtained by the Professor in 1818" were subsequently returned. Very little now remains of the original collection, such as it was.

The number of volumes in a library is a poor measure of the value of its contents, but it seems clear that at the end of the first period in the history of the School its library was perfectly insufficient. After all, the School was not yet much more than a lawyer's office, and it was natural enough that the books in it should be few more in number and collected with little more system than the books in the office of the ordinary practitioner of the time.

In November 1829, a month or two after Story had begun to teach in the Law School, he wrote to President Quincy: "One of the most important objects is to give [the

School] at once in the view of every student a decided superiority over every other institution of the like nature. It will, therefore, obtain a fixed reputation with the Public and give some confidence to parents that neither the time of their children nor their own money will be expended without an adequate return. . . . To accomplish this end it is indispensable that students should have ready access to an ample law library which shall of itself afford a complete apparatus for study and consultation. I need not say that no such library now belongs to the College. . . . In a practical sense the present law library is of very little value or importance. We have very few of the best elementary books and of those we have most are of poor editions. . . . The textbooks of study required by the students may be obtained without much difficulty, but those which are required for occasional consultation are very deficient." At the same time Professor Ashmun wrote: "I do not suppose there can be any doubt of the necessity that the students should at once be furnished with an extensive library. It is not only in fact indispensable, but, what is not to be overlooked, it is by them so considered."

Story himself had been carefully collecting a law library for many years. His means were limited — his salary at the School was only $1000 and he persistently refused to allow it to be increased — he could not, therefore, afford wholly to present his library to the School. But because he felt the urgent and instant need, he offered to the College his collection of 563 volumes of Law Reports at $4 per volume. The Corporation accepted the offer, "being satisfied from information obtained from Judge Jackson and Professor Ashmun that the price is very low." In fact it was very low, and the Corporation the same day insured the books for $4000.

There begins the great tale. Story's 553 volumes have now expanded to more than 170,000. From that begin-

DANE HALL

After 1845 when the addition was built in the rear as shown. (*From an old print.*)

LIBRARY OF
outhern Methodist University
DALLAS, TEXAS

ning until to-day the School's library has constantly excelled in size and completeness the library of any other law school in the world. A year or two later Story sold to the School the remainder of his law library, consisting of 384 books in English and 123 in foreign languages, for the very modest price of $1400, less than half the cost of the books.

In 1832 that "spacious building," Dane Hall, the second home of the School, was dedicated and the library was moved into two rooms on the lower floor. In 1834 a second catalogue of the collection was prepared by Charles Sumner, then librarian. The library then contained something more than 3500 volumes. "While writing this page," said Sumner in his preface, "information has been received of a splendid bequest by the late Samuel Livermore, Esquire, of New Orleans . . . of his entire library of works on the Roman, Spanish and French law." President Quincy later said of the Livermore library, in his history of the University, "As a collection of rare, curious and important learning, it is probably not exceeded and perhaps not equaled by any other collection of its size in America, if it be in Europe." Both Professors Story and Ashmun realized the importance of the library to the School, as their letters show, and they labored zealously for its advancement.

In 1841 the library contained more than 6100 books and another catalogue was felt to be necessary. "Since the publication of Mr. Sumner's Catalogue in 1834," said William R. Woodward, Librarian, "the library has been enriched, not only by extensive purchases both in America and in Europe, but by the receipt of Mr. Livermore's splendid donation and by valuable presentations from Mr. Justice Story and other distinguished friends of the legal profession which, while they do honor to the donors, also place this library among the first in this country, or perhaps in any country, as a collection of general and

municipal jurisprudence. The donations and importations since 1834 have been such as to enable the student to verify every citation which is made in Blackstone's Commentaries, and nearly complete the collection of European law, both British and Continental, from the earliest times down to the eighteenth century; exhibiting to the student the principal sources of modern jurisprudence. The library also contains several works upon Asiatic law, particularly upon those portions which are in use in the British East Indian possessions. The collection of the modern codes of continental Europe is probably more ample than that of any other in this country; and importations of the most valuable of the latest British and continental law books and legal reviews are regularly made."

Others, however, felt that Mr. Woodward was somewhat too complacent. A writer in the *American Jurist* for October, 1841, said:

"The publication of this catalogue enables us to judge, in some sort, of those means of obtaining a law education, in the Law School at Cambridge, which are independent of the personal labors of the distinguished professors of that institution. In the departments of English and American law, little perhaps is wanting; but, in some departments of general jurisprudence, much is to be desired. In the department of Roman law, for example, we find none of the modern works, with the exception of the unfinished English translation of Savigny's history, by Cathcart, and a French translation of the same work, and the newly discovered fragments of Gaius; and yet, in no department of jurisprudence, has the present century produced more, or more valuable works. We venture to say that, with the exception of the *corpus juris* itself, there is hardly a single book in the law library of Harvard College which a modern professor of Roman Law would think of putting into the hands of his pupils. We

desire not to be misunderstood. The works on Roman Law, in this library, are undoubtedly valuable, and well deserve a place there; and the same may be said, and for much the same reason, of Bracton, Glanvil, and the year books; but the former are as little suited to the modern student of the Roman Law, as are the latter to the student of the Common Law. . . . In modern works on the Roman Law, the library of the Boston Athenæum is infinitely richer, though that, we believe, has received no accessions in this department within the last fifteen years. In Criminal Law and prison discipline, the works on which, produced in continental Europe within the present century, would, of themselves, constitute a large collection, this library is almost entirely deficient; and, of modern works of public law, and the philosophy of law, we find few or no traces. Of all the countries of Europe, or, indeed of the world, Germany now produces the greatest number of works on jurisprudence and its kindred topics, which are almost all of them written in German; and, yet, astonishing as it may seem, the law library of Harvard University, — among the first, 'perhaps in any country as a collection of general and municipal jurisprudence,' — containing 'a nearly complete collection' of European continental law, 'from the earliest times down to the eighteenth century,' — and furnished with the 'most valuable' among the latest 'continental law books and legal reviews,' — as Mr. Woodward would have us believe, — does not, so far as we have been able to discover from the catalogue before us, contain a single work in the German language!"

But Story and Greenleaf needed no spur. They bought as much as their funds would allow. "It is to be regretted," Greenleaf had said in 1836, "that the state of the funds will not yet enable us to complete the collection of American law as the honor of the Institution as well as the interest of the students would seem to require."

The finances of the School between 1841 and 1846 were easier, and the annual sum spent for books during that period was well over $2500, or more than twice as much as had been spent annually in the seven years between Story's catalogue and Woodward's. A fourth catalogue of the School was published in 1846. The Law School Visiting Committee had reported to the Overseers that "the want of a complete catalogue is felt, though application of it to annual examinations must be attended with some difficulty, as so many of the volumes are in requisition for the students. But being printed, it would become a guide to those who might be desirous of increasing by donation the already admirable collection." The annual catalogue of the University for the academic year 1846–47 gives the number of volumes in the law school library as about 12,000, nearly twice as many as in 1841. In October, 1845, Greenleaf surveyed the result of his efforts and proudly reported "The law library, by comparing its catalogue with those of foreign libraries so far as we have received them, is found to exceed any other known to us, in extent of its range and the variety of foreign laws which it comprises, though several others exceed it in number of volumes." In 1847 the Visiting Committee reported, — "The library is in excellent order and preservation," and "its present state and progressive increase gave much pleasure to the gentlemen who inspected, assisted as they were by Professor Greenleaf."

Story died in 1845 and Greenleaf resigned in 1848. After that, for many years no one seems to have taken particular interest in the library. The School continued to follow its old custom of furnishing gratis to each student textbooks prescribed in his courses, but otherwise purchases of books were on a much smaller scale than formerly. In the academic year during which Story died over $3250 had been spent for books and this was

DANE HALL — THE WORKING LIBRARY

about $600 less than had been spent the year before. For the two years more that Greenleaf remained at the School purchases were considerable. After that the amount spent for books rapidly fell off. The year after Greenleaf's resignation it was less than $600 and ten years later only a little more than $300. For the whole period of twenty-four years between Story's death and Langdell's appointment as Dean, the average annual outlay for books, including the cost of the free textbooks, was well under $1000. The annual catalogue of the University for 1869–70 announced that the Law School library contained about 15,000 volumes. This was an increase of 3000 volumes in twenty-four years, an average of 125 a year. Very many of these were the duplicate textbooks furnished to the students. It is said that in 1870 there were more than 3000 such books owned by the School and counted as part of its library. Of course these had not all been bought after 1846. If they had been, the increase of the library in twenty-four years would have been exactly nil. At most, it was very small.

But there were other reasons than the apparent indifference of the professors for the slight increase of the library during the quarter century before Langdell. In the first place, it was giving pretty satisfactorily the service demanded of it. In 1846 the Visiting Committee had reported: "The law library is not without reason judged to be the best collection of law authorities in our Union." In 1851 they said in mouth-filling phrase that the library "attracts, as it highly deserves, the attention of not private individuals alone but public bodies also, and not simply that of our own patriotic countrymen, but also of foreign friends to the progress of juridical, civil, and political knowledge." In 1852 it is said that "the library in its completeness is as honorable to the College as it is useful to the students." In 1854 "it is believed that . . . [the School's] library is more afflu-

ent of law books in the English language than any other collection." Moreover, after 1856 times were hard for the School. The library was then wholly dependent, as it is now mainly dependent, on what was left over from necessarily fluctuating tuition fees after the expenses of teaching and maintenance had been paid. The School had had a comfortable balance on the treasurer's books until 1856–57, when the unfortunate investment in Brattle House turned a surplus of over sixteen thousand dollars into a deficit of over six. It was almost ten years before there was a surplus again. During these years, of course, as much saving as possible had to be effected in the general funds of the School, and that meant small expenditure for books.

Probably the straitened financial circumstances of the School furnished the reason, also, for the delay in the appointment of a permanent librarian. As early as 1855 the Visiting Committee had reported "little regularity in the management of the books and a general want of neatness and method," and suggested a permanent librarian. The student librarians could in the nature of things look after the books only half-heartedly, and many were lost. In 1858 it was said that 150 books were missing, "being 41 more than the total additions during the year." Such a condition, said the Visiting Committee, disclosed "a bibliofuracity . . . deserving of special punishment . . . carelessness not to be distinguished from crime." Another committee reported in 1861 that an examination of the books in 1858 showed that in the past twelve years the total losses had amounted to 870 volumes. "Your Committee," it said, "looks upon this state of things as truly alarming; . . . security should be the first law of such a collection. . . . The Librarian is not a librarian in the common acceptation of the term — a keeper of books — for he exercises no special supervision." . . .

The modern life of the School and of its library began with the coming of Mr. Langdell in 1870. The change in methods of teaching which Langdell inaugurated and which his colleagues and then the country gradually adopted involved of necessity radical changes in the library. The law, Langdell thought, was a science and not a collection of isolated facts. To learn this science, as to learn any other, the student must seek the living founts — he must deal in the stuff that forms the subject-matter of his study. As the new Dean said: "The library is to us what the laboratory is to the chemist or the physicist and what the museum is to the naturalist." No one knew as well as he what was needed to make the library a fit instrument for his teaching, for while his plans still puzzled others, they were clear in his own mind, and moreover he had himself served as librarian for several years, when he was a student in the School. Three steps were necessary at once, and they were taken without delay. A permanent librarian was employed, the supply of free textbooks to the students was cut off, and duplicates were supplied of such reports and other books as were in frequent demand and would be needed even more under the new method of teaching. The School's "rich library," said the President in his annual report to the Overseers, "is an indispensable aid to the student. The Corporation, feeling the importance of still further enlarging this library and improving its administration have, during the year 1870–71, employed a permanent librarian, spent about $1200 on the shelves and other fittings of the room, and about $3400 on books and binding." But the story of the change and the mechanical devices by which it was aided is best told in the Dean's own words. In his report for 1870–71 he wrote:

"At the beginning of the year important changes went into effect in regard to the law library. Prior to that time it had been kept together, the books being

arranged in alphabetical order, and there being no systematic attempt to provide duplicates of such books as were in constant use. From the opening of Dane Hall in the morning to the closing of it in the evening the entire library was accessible, without restriction and without supervision, not merely to the members of the School, but to all persons. The librarian had generally been a member of the School, who occupied a room in Dane Hall, and received a trifling compensation in addition to his room rent and tuition. It was not any part of his duty to spend any of his time in the library; still less to exercise any authority or supervision over those who used it. The janitor had certain duties to perform in reference to the library; but it was not his business to exercise any authority or supervision over those who used it, nor was he expected to remain in it, except when certain specific duties required his presence. In fact, as the librarian and janitor were situated, it was out of the question for them to exercise a constant supervision over the library, and any partial supervision would have been useless.

"The result of this system being found very unsatisfactory, it was decided to make three radical changes, namely: First, to require the constant attendance of the librarian or his assistant in the library during all the hours that it was open; second, to render the general library inaccessible except with the librarian's permission; third, to procure duplicates of all such books as are in constant use, and with these to form a working library, to which every student should have free access.

"During the summer vacation of 1870 these changes were carried into effect. A permanent librarian was employed, whose duty it was made to devote his whole time and attention to the interests of the library. The working library was formed in the main by taking such books from the general library as seemed desirable for

DANE HALL — THE STACKS

LIBRARY OF
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DALLAS, TEXAS

that purpose, and supplying their places with new copies. In this way the library has been supplied with duplicates of all the most important English reports, of the Massachusetts reports, of the reports of the Supreme Court of the United States, of all the most important New York reports, of the most important Digests and Abridgments, and of a good number of standard treatises. The working library has also been furnished with a good collection of standard works of reference. Whenever there is but one copy of a book, it is kept in the general library, except in case of mere books of reference; but as often as any book is found to be in sufficient demand to make a copy of it desirable in the working library, an additional copy is obtained for that purpose. The duplicates which have been purchased for the general library, to supply the places of those taken out for the working library, have been invariably the best editions that could be procured, well bound and in good condition.

"The working library is separated from the general library by a railing, and when books from the latter are wanted, they are given out by the librarian and his assistant, the names of the books being entered on a slip of paper, which is retained until the books are returned. When a student asks permission to go behind the railing to examine books, such permission is never refused when the librarian is present. It is proper to notice another important change. It had always been the practice to furnish every student, as a gratuitous loan, with a copy of every textbook used in the school. This made it necessary to purchase from one hundred to one hundred and fifty copies of every new textbook introduced; and as the works used as textbooks sometimes consisted of as many as three or four volumes, and as the books thus purchased were generally superseded in a few years by other books, or by new editions, it was found to be a great and constant source of expense to the school; so great, indeed,

that the general library had suffered severely in consequence, it being impossible, for want of funds, to supply its most pressing needs. This practice has been entirely discontinued since the beginning of the year 1870–71, so far as the purchase of new books is concerned; and students have been left to supply themselves with such books as have been introduced since that time. No reason has been seen for doubting the wisdom of this change. There are obvious advantages to the student from owning the books which he uses as textbooks; he can always supply himself with the best editions; and, as the course of study is now arranged, it is believed that the necessary expense for textbooks in the Law School is not materially greater than in the College proper."

From 1870 until to-day the history of the School's library is writ large in the reports of the Deans of the School to the President and of the President to the Overseers. The space given to it in both series of reports indicates the important place it has filled in the minds of the governing boards of the University and the care and thought that have constantly been expended on its development. "The Corporation," said the President, "recognize the fact that the library is the very heart of the School." "The most essential feature of the School," said the Dean, "that which distinguishes it most widely from all other schools of which I have any knowledge, is the library. I do not refer to the mere fact of our having a library, nor even to the more important fact of its being very extensive and complete; I refer rather to the library as an institution, including the relation in which it stands to all the exercises of the School, the influence which it exerts directly and indirectly, and the kind and extent of use that is made of it by teachers and students. Everything else will admit of a substitute, or may be dispensed with; but without the library the School would lose its most important characteristics, and indeed its identity."

The use of the library increased so rapidly that within two years the Dean was seriously alarmed at the "great wear upon the books." The only purpose of books, of course, is to be read, but if fifty or a hundred men, one after another, read and thumb the same pages in one volume, those pages are likely to wear out and the volume become imperfect and consequently the set to which it belongs. A whole set of books which are not in the market and which it is almost impossible to procure may be ruined by the excessive use of a single volume for a special purpose. The Librarian was reported to be in despair about it. "It is not a large proportion of the books of the library," said the President, "which are being destroyed; but it is the books most referred to by the teachers, which are presumably the most valuable books for present use in teaching." Reprinting the worn pages was a costly and unsatisfactory remedy. The difficulty was not really solved until teachers began to print together in one volume the cases which they expected the class to study. It is believed that the modern case book owes its birth to this purely mechanical difficulty. The separate publication of selected cases arranged by topics became a part of the Langdellian method of teaching law.

But this device did not entirely cure the inevitable ill. Illustrative cases which no case book of possible dimensions could contain must still be referred to and read. "Since the date of my last report," said the Dean, many years afterwards, "it has been decided to increase the usefulness of the library by providing it with another copy of every set of English and American reports which is used to any considerable extent. With a view to the speedy accomplishment of this object, the Librarian made a trip to England during the last summer vacation, and, while there, he succeeded in purchasing, on very favorable terms, 1377 volumes of English reports, making, with extra sets of English reports already belonging to

the library, 1637 volumes. We have also availed ourselves, and are still availing ourselves, of every good opportunity to purchase another copy of every set of American reports of which another copy is at all needed, and our purchases of such reports already amount to 508 volumes. When this plan has been fully accomplished, the library will have three copies of all the more important sets of English and American reports, and of several sets it will have four copies."

Meanwhile the School grew steadily in fame and in numbers, and added steadily to its library. The collection had now become so valuable that the authorities began to think of the risk of fire. Dane Hall was not fireproof, and in winter six or seven fires were kept burning in the building to heat it. Of course the books and the students must be kept together. "There is needed, therefore, for the Law School," said the President as early as 1873, "a new building, a large part of which shall be fireproof." Besides, the library was uncomfortably crowded. In 1877 the evil had increased to such an extent that not infrequently students were unable to find a place to sit. In a year or two more conditions were almost unbearable. The Dean said: "Regarded as a repository for books, the accommodation afforded by Dane Hall is very bad in quality, and in the near future it will be absolutely insufficient in quantity. During the summer, when it is necessary to keep the windows open, the books suffer greatly from dust, while during the cold weather they suffer greatly from heat. The evil arising from excessive heat is greatly aggravated by the necessity of utilizing for the storage of books all the space from the floor to the ceiling. The books also suffer from gaslight during all seasons of the year. Again, the danger to the books from fire is so great as to be a cause of constant anxiety. If the library should be destroyed, it is probably safe to say that a hundred thousand dollars

DANE HALL IN ITS LAST YEARS

The Ionic colonnade shown in the other illustrations was sacrificed in 1871, when the building was moved toward Harvard Square to make room for Matthews Hall. The Law School remained here during the early years of the case system, but moved to Austin Hall in 1882. Dane Hall was afterwards used by the College. It was gutted by fire on February 3, 1918, and demolished the following May.

LIBRARY OF
Southern Methodist University
DALLAS, TEXAS

would not replace it; and its value is increasing rapidly. Bad, however, as is the quality of the accommodation afforded for the storage of books, an increase in its quantity is the most immediate and pressing need of the library. Already the Librarian has been compelled to remove large quantities of books from the library into private rooms; and even this resource, to say nothing of its inconvenience, will soon be exhausted."

A few more very uncomfortable years, and the library was moved, in the last weeks of September, 1882, into "the very handsome and commodious building which the School owes to the munificence of Edward Austin, Esq., of Boston." "It would be hard," said the President, "to exaggerate the advantages which the School derives from the possession of this admirable building. The reading room, which is the chief resort of the students, is a noble room, light, airy, and handsomely furnished; the book room is fireproof, well lighted, and capacious enough to hold the present library and the probable accessions of fifty years."

All in all, the School and its library were now in a position of great strength. In a few years the time was considered ripe for a review of achievements. Of the library Dean Langdell wrote in 1890 to President Eliot.

"In 1869–70 the library was so nearly a wreck that it required to be reconstructed almost from its foundations. Now it is believed to be larger (referring only to law books proper, and excluding statutes), more complete, and in a better condition than any other law library in the United States, with the possible exception of the national library at Washington. . . . Prior to 1870–71 the only persons employed to care for the library were a student-librarian and the janitor of Dane Hall. . . . Now, a permanent librarian, a permanent assistant librarian (both of whom have held their present positions for the last eighteen years), and three assistants are constantly employed in

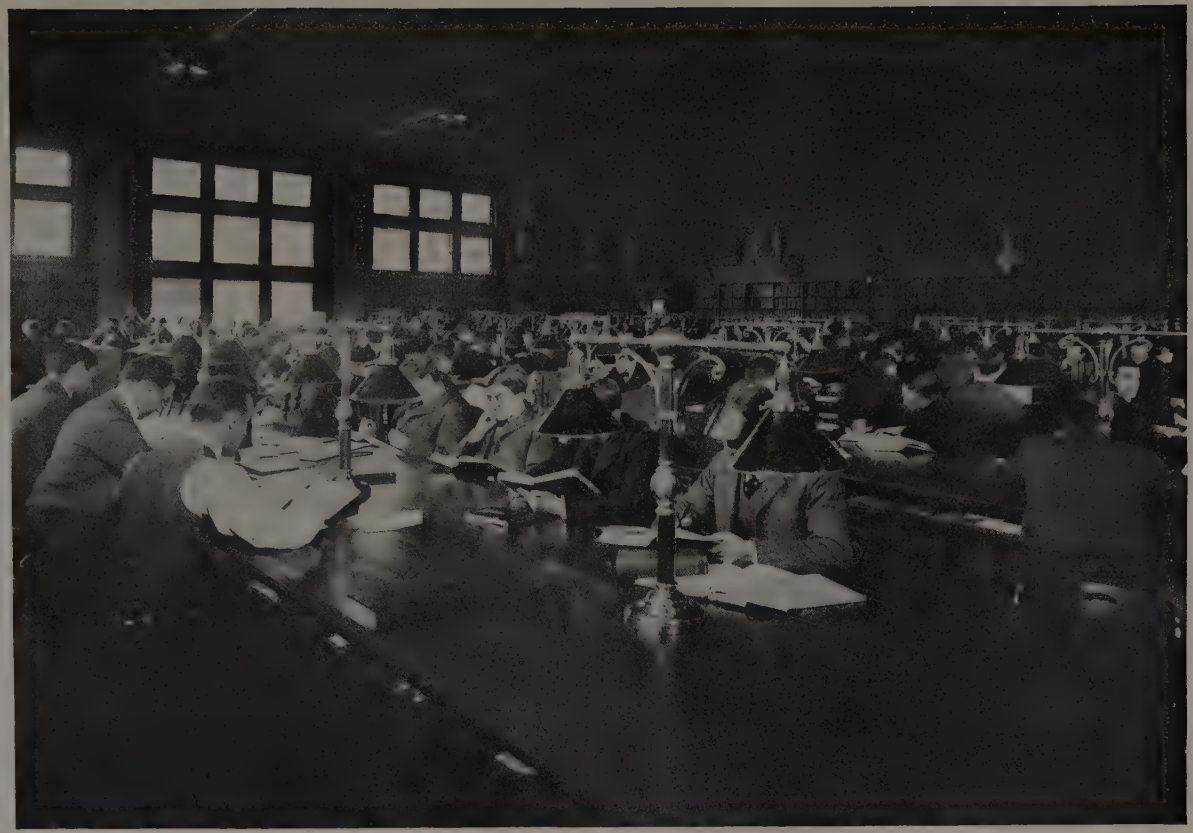
the care and administration of the library and in other administrative duties. Prior to 1870–71, and subsequently to the time of Professor Greenleaf, no one connected with the School took much interest in the subject of purchasing books for the library. The practice was for the booksellers with whom the School kept an account to send to the library a copy of every new book received by them; and, as to each book so sent, one of the Professors decided whether it should be kept or not. As to the purchase of other than new books, there was no system whatever; and such books were seldom purchased unless for some special reason; and when it was decided to purchase any such books an order for them was given to a bookseller. Under this practice the library seldom received any accessions of old books; and, even had this been otherwise, it would almost inevitably have happened that most of the accessions received would represent some person's hobby, and so would improve the library only in some one direction. Moreover, old books purchased in such a way are sure to cost two or three times as much as they need cost. There are thousands of law books without which no library is perfect, and which yet have no fixed market value, and which may be said to be more or less rare in the sense of being more or less difficult to find, but very few of which are rare in the sense of commanding a high price in the market. The only way, therefore, to purchase such books to advantage is to seek opportunities of purchasing them at a low price, and to purchase them, as a rule, only when such opportunities offer. It was therefore decided, about seventeen years ago, that the Librarian should make it a part of his duty to follow up auction sales of law books in all the principal cities of the United States. Accordingly, on the 22d day of January, 1874, he attended an auction sale for the first time and purchased 36 volumes. . . . Prior to 1870–71 there was never, so far as is known,

any collation made of books purchased for the library for the purpose of ascertaining whether or not they were perfect. Indeed, the practice of collating books was not begun until January, 1874; but since that date every book purchased for the library, whether new or old, and whether purchased at private or public sale, has been collated, page by page, before being accepted. Soon afterwards the work was begun of collating, page by page, all the books that were in the library prior to the date just mentioned; and this work has since been prosecuted with as much rapidity as possible; and no money has ever been spent in rebinding or otherwise repairing a book until it was first collated. . . . Prior to 1870–71 the library was as little cared for in respect to the binding and repairing of the books as in other respects. Binders were employed with little regard to their ability to do good work, and little pains were taken either to give them proper directions or to see that they did their work in accordance with such directions as were given them, or that they did it properly; and the results were deplorable. In no case was the work what would now be regarded as good; in many cases it was shocking in respect to the work done and the materials employed; and in many other cases books were actually ruined by the binder. Since 1870-71 the most strenuous efforts have been made to improve the administration of the library in respect to the binding and repairing of books; and, though the success of these efforts has not been all that could be desired, yet it has upon the whole been gratifying; for the library may now safely challenge comparison in respect to its condition with any other law library in the United States. . . ."

Welcome as the extraordinary growth of the School was, it brought with it serious mechanical difficulties in administration. "When Austin Hall was erected," wrote the Dean in 1891, "it was expected to furnish ample

accommodation for all the students who would seek admission to the School during the next fifty years. Only eight of those fifty years have now passed, and yet the building is already outgrown. . . . Nothing short of an additional building and an additional library will make it practicable for the School to furnish suitable accommodation for a larger number of students than it now has." For the moment, however, the reading room was enlarged by adding to it a space theretofore little used. "The library and reading room," said the President, "constitute the sole laboratory which the Law School needs; and it is the intention of the Faculty to keep that one laboratory in the most serviceable condition possible."

It was no light task to carry out this intention. In 1900 the President reported that the "library is growing, and threatens to continue to grow, at the rate of more than 6000 volumes a year. An immediate enlargement of the building is imperatively demanded; and in planning that enlargement it seems to be necessary to look forward to a law library of more than 100,000 volumes within ten years." (It is an interesting fact that ten years later the library contained 120,600 volumes and 13,390 pamphlets.) In 1901 Dean Ames reported that "the School has been enlarging its library at a rapid rate; and by the end of the current year, the shelving in the present building will be filled. As there is no reason why the School should not spend $12,000 a year on books, and as books are the sole apparatus required by a law school, the expediency of providing immediately more shelving on which to place the accessions is obvious. The chief distinction of the Harvard Law School — after its professors — is its admirable library." As a temporary expedient, the overflow of the library was stored in a building abandoned by the Lawrence Scientific School, and in the cellar of Hastings, "to the inconven-



AUSTIN READING-ROOM

Showing its crowded condition before Langdell Hall was built

LIBRARY OF
outhern Methodist University
DALLAS, TEXAS

ience of the reader, and at the disquieting risk of the destruction of the books."

Finally, the crowding in Austin Hall was no longer to be borne. The Corporation did not think fit to provide more accommodations out of the general funds, and the money to build Langdell was taken from the surplus that the School had accumulated, the income of which it was spending annually on its library. In the fall of 1907 the Dean announced the completion of the new building, and prophesied that Austin and Langdell "will, for a dozen years at least, give dignified, attractive, and ample accommodations for all the needs of the School." Dying three years later, Mr. Ames did not live to see that the extraordinary increase of the School in numbers was likely again to shorten the term of ease prophesied by those who had carried through an enlargement of the physical plant.

Since the practical disappearance of income through interest on the surplus, the library has had a number of opportunities materially to increase its usefulness. Some of them, even some of very high importance, as, for example, the purchase of the great criminological library of Sellier, were necessarily missed, but in the years between 1911 and 1914 at least four were embraced, each of which was thought to justify a draft on the principal of the small remaining surplus. In one instance, the purchase was made possible by a private subscription, raised hastily among well-wishers of the School.

In 1911 the library acquired the remarkable collection of Bar Association Proceedings which had been made by Francis Rawle, Esq., of Philadelphia, believed to be the only complete collection of State Bar Association Proceedings in existence, necessary apparatus for a study of the development of law and legal thought in America.

In 1912 there came a sudden chance to buy the great international law library of the Marquis de Olivart.

The catalogue of this collection is constantly referred to in recent treatises on the subject as the standard bibliography of international law. "It purports to note only works in the author's own library," says Sir Frederick Pollock, "but we know of nothing approaching it in completeness." The Faculty was impressed by the fleeting opportunity, and felt justified in expending in the purchase a considerable part of the small surplus that remained.

In 1913 was offered for sale another library of high, though very different importance, the fruit of a lifetime of diligent and intelligent collecting of the manuscripts and printed books wherein the growth of the Common Law may be followed back as far as written record exists. It was the last considerable collection of such material remaining in private hands. By the generous aid of the School's alumni and friends, it was made possible for the library to purchase the Dunn collection *en bloc*. Before this purchase, the School possessed the greatest collection of early English law books in this country; it has now placed itself, as has been said, "far beyond the possibility of rivalry." Perhaps the total number of Year Books printed was not more than four hundred and fifty; of these the School had two hundred and seventy before the Dunn purchase, and after it three hundred and twelve, many more than are in the British Museum, its nearest competitor.

In 1914 the School purchased a very large collection of material from South America. Dean Thayer wrote to the President: "There appears to be no considerable collection in this country of the laws, decisions and doctrinal legal writings of the southern republics, unless perhaps at the Library of Congress. Yet in the process of time these countries seem likely to play a very large part in our commercial and, perchance, in our political life. As we grow more intimate with them, we shall

need more and more to know something of their legal history and everything of their present legal status. For some years attempts have been made from a distance to acquire for the School the materials whence this knowledge might be drawn, but the results have been fragmentary. In the spring of 1913, however, a chance came to take advantage of the journey to South America on a book-hunting mission of the librarian of a sister institution, the skilled buyer through whom the School acquired the Olivart Collection, a man singularly well endowed and trained for the work he was undertaking. Dr. Lichtenstein has now been in South America for a year, and he and his principals are well satisfied with his success. He has visited all the republics and has bought for the School complete, or nearly complete, collections of their legislation, the reports of their courts, and the works of their great legal writers."

It should be interesting at this point to see how the library of the School, after its varying fortunes through the last hundred years, and in view of the somewhat complacent praise which has at times been its portion, compares to-day with the libraries of other law schools and with other law libraries in general. The measure of value of a library is not the number of books it contains, but the class of readers it serves and its ability to satisfy their needs. Nevertheless, number of volumes is an easy test, though unless the books be carefully selected, most fallible; moreover, it is the only test for which statistics are available.

In 1912 the *Law Library Journal* published a list of well over five hundred law libraries and law departments of libraries in the United States and Canada, with a statement of the number of volumes in each. The Harvard Law School, with 150,000 volumes, contained approximately three times as many as the library of the school nearest it; four bar association libraries contained

over 50,000 volumes each, the largest of them nearly 94,000; the law library of Congress and the Supreme Court contained 145,000 volumes. Measured, then, by this admittedly superficial standard, the library of the School is approached in America only by the library of Congress. As to England, Dicey, writing for the *Contemporary Review* in 1899 on the teaching of English Law at Harvard, had said of the library, "It constitutes the most perfect collection of the legal records of the English people to be found in any part of the English-speaking world. We possess nothing like it in England. In the library at Harvard you will find the works of every English and American writer on law; there stand not only all the American reports — and these include, as well as the reports of the Federal courts, reports from every one of the forty-five states of the Union — but also complete collections of our English reports, of our English statutes, and of the reports and statutes of England's colonies and possessions. Neither in London nor in Oxford, neither at the Privy Council nor at the Colonial office, can one find a complete collection, either of American or even, astounding as the fact sounds, of our Colonial reports."

A better idea of what the library of the School contains, so far as figures throw light upon the matter, may be gathered from the results of a count of the books upon the shelves made for a special purpose in April, 1916. The books are so arranged in the library that they could without much difficulty be counted in classes. Pamphlets, of which the library contains some 20,000, were not counted, except in a few instances where they were waiting to be bound, when they were counted as if bound. The results of the count are shown in the following table, which is believed to be as accurate as such figures can be.

	Total Vols.	Of These Duplicates
Reports, digests, guides to cases, etc.		
American	32908	19560
British	13063	6526
Canadian and other British Colonial	3337	12
Statutes, codes, session laws, etc.		
American	6365	271
British	1854	309
Canadian and other British Colonial	3305	226
Textbooks and treatises upon English and American law (including Law Dictionaries, Encyclopædias, and case books)	26805	6261
Roman and foreign law	47442	1786
International law	14876	1200
Periodicals, including Bar Association reports	5914	1580
Records and briefs	4236	0
Legislative journals, and other government documents not included in above classes	2338	22
Miscellaneous	2377	177
Reports of Attorneys-General	208	0
Reports of Public Utility Commissions	838	157
Trials	4265	400
City and Town Ordinances and By Laws	1498	60
Total	171629	38555

The library of to-day has been made possible only by the constant help of its friends. Sometimes they have given money — more often they have given collections of books. To name only those who have given most is to call a considerable roll of benefactors. John Howe's gift of $100 already mentioned does not look large beside the sum of $10,000 contributed by the friends of the School toward the purchase of the Dunn books, but it should be compared with the whole amount appropriated by the Corporation to the library during the first decade of its existence. Sometimes, as B. R. Curtis did in 1874, an instructor has remitted his fee with directions that it be applied to the purchase of books on his subject. Occasionally others have seen special needs and given to the

library funds wherewith to meet them. In 1882 friends and alumni of the School subscribed, in sums of from $5 to $25,000, a fund of over $47,000, the income to be devoted to the purchase of books, and the income from this fund forms an important part of the library's spending money to-day. The gift of $10,000 for the Dunn purchase has been mentioned in passing. In 1914 the late John L. Cadwalader bequeathed $20,000 to the Corporation for the purchase of books for the library of the Law School, a most opportune addition to the library's small endowment. As to books, the gifts of Christopher Gore in the first decade and the bequest by Samuel Livermore of his noble library of "works on the Roman, Spanish, and French Law" have been mentioned in their place. Individuals gave individual books from time to time after the Livermore bequest, but no further notable gift of books was received until in 1903 Mr. Edward James Drifton Coxe gave to the School the law library of his father, the late Brinton Coxe, consisting of 3225 volumes and 92 pamphlets and containing many rare volumes of English, American, Roman and Canon Law, together with a nearly complete set of the decisions of the Rota Romana. About the same time Mr. Learned Hand, now Judge Hand, gave 1421 volumes from the library of his father, the late Samuel Hand, Associate Judge of the Court of Appeals of New York. (To this gift Judge Hand added almost as many more volumes in 1915.) Another gift of very high importance was received some months afterwards. The late Mr. Justice Gray had, since he had gone to Washington, kept the printed records of cases decided by the Supreme Court of the United States. These his widow now presented to the School. They were bound up in 1300 large volumes. This particularly valuable set is kept up through the kindness of Mr. Justice Holmes. In 1905, by the will of the late James M. Barnard, subject to the approval of Mrs. Barnard, the

Horace Gray

HORACE GRAY, LL.B. 1849
Associate Justice of the United States Supreme Court, 1882–1902

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library received his law books and portraits of lawyers. An additional gift of $2000 for the purchase of books, preferably works on International Law, was made by Mrs. Barnard. About the same time some very early and valuable Pennsylvania Laws were presented by Dean Ames, who had a habit of giving to the School whatever of value belonged to him, and Mrs. Langdell gave ninety volumes of important and valuable early English Reports which had been deposited for many years in the library by the late Professor Langdell.

But not even the fostering care of the governing boards and the help of its friends could have raised the library to its present position of primacy among the law libraries of the world without the steady care, the boundless devotion, and the wise insight of its Librarian, John H. Arnold, now its Librarian *Emeritus*. Announcing Mr. Arnold's resignation in 1913, Dean Thayer said: "Mr. Arnold was appointed Librarian in August, 1872, and his term of more than forty years' service thus included almost all Mr. Langdell's term as Dean, and the whole of Mr. Ames's. In the history of the School his name will always be linked with theirs. Working in the closest coöperation with them, and like them utterly devoted to the interests of the School, he did so much to build up the present library that it stands to-day as a monument to him. When he took office it contained less than 10,000 volumes; before he retired it had grown to a total of over 150,000. These figures, impressive as they are, leave much of the story untold, for they tell nothing of Mr. Arnold's achievements in securing books cheaply before the development of a demand which greatly increased their value. He early acquired an unique knowledge of the opportunities for buying English and American law books; and to unceasing vigilance he added a singular wisdom in forecasting the future. As a result the library has to thank

him for very many valuable books obtained at prices which to-day are hard to believe."

It were tedious now to describe in more detail the component parts of this great collection of books, or to dwell longer on the steps by which the Harvard law library has attained its admitted rank in its field, a rank which brings with it grave responsibilities. The law of life is growth or decay, a truth particularly well illustrated in the life of a collection of books. Shall the maturity of our library fulfil the promise of its youth? The future beckons. Unfortunately the library has not to-day resources enough to meet that future confidently. It may be interesting to examine the situation more particularly.

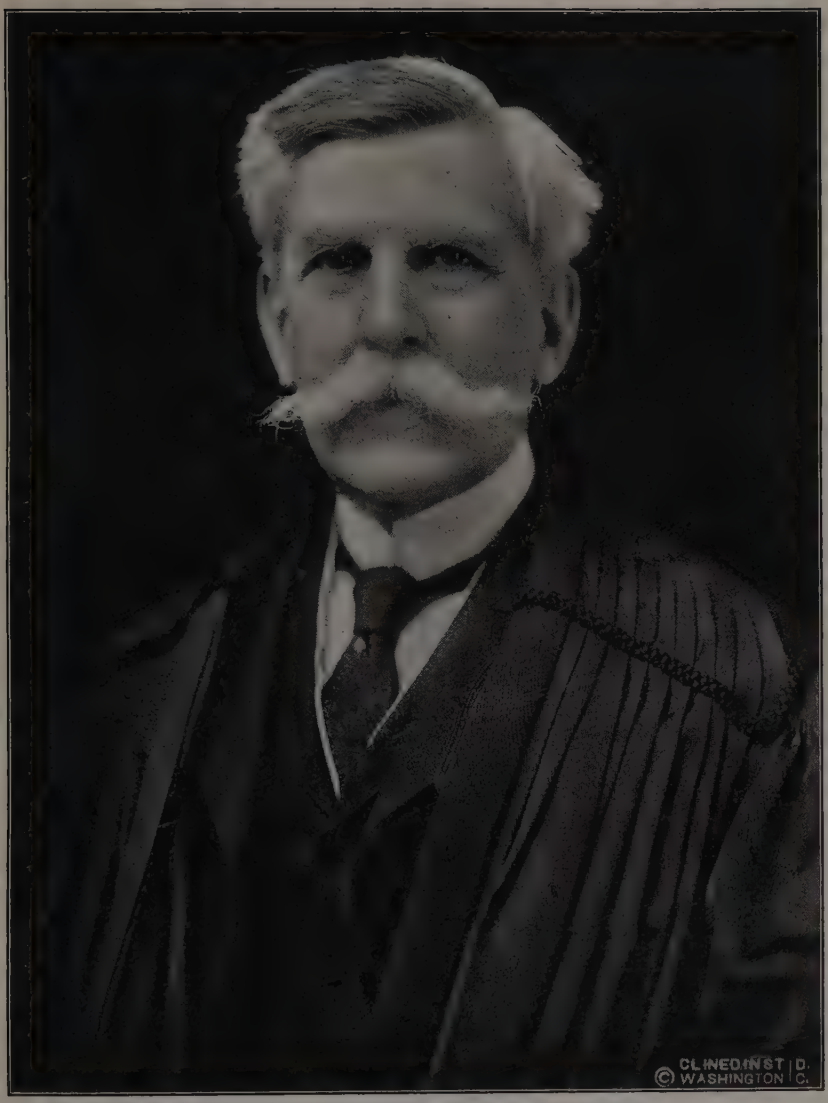
In reporting in 1900 the retirement of Professor Langdell from the Law Faculty, Dean Ames had said: "When he came to Cambridge thirty years ago he found here the wreck of a library. He leaves the library without a peer among the law libraries of the world." In truth, apparatus for the ordinary study of the law, including, where necessary, duplicate copies of much used books, was pretty well supplied. Much, however, remained to be done. For example, the collection of the laws passed by the various legislatures of the United States since the Revolution was good, was even very good, but a considerable number of the rarer sessions were still lacking. Completeness in a collection of this sort is in the highest degree desirable, but of course the more nearly completeness is attained the more expensive and difficult, relatively, becomes each step forward. The legislation of the American colonies also is of great importance to a library that pretends to furnish materials for a complete understanding of the history of the law in America. The original sessions are, however, so rare and command so high a price that the School cannot, under ordinary circumstances, afford to compete for them. Nevertheless, the library is in a position to know of occasional opportunities for

the acquisition of this valuable material at comparatively reasonable prices, and it is unfortunate that such opportunities must at present be passed by. They are not likely to recur, or they will recur only with diminishing frequency and at ever increasing cost, for other institutions are in the field and are eager buyers. It is particularly unfortunate that the Harvard Law School must let such opportunities slip, for it is clearly not to the general good that material of this sort should be scattered instead of being added to the already large collection in the School's possession.

Moreover, while the School was earning a comfortable surplus year by year, the Faculty felt authorized in acting on their conviction that the law could be best taught only in a place where its history, philosophy and content might be thoroughly studied and made known. They realized that the law was properly to be regarded as "a great anthropological document," and so regarding it, they desired that the library of their School might show the manner of development of legal institutions wherever the race had reached an ordered life. Taken as a counsel of perfection, this meant collecting the laws of all civilized communities and the opinions of judges and commentators upon them from the beginning, as well as the books that revealed what had been thought about the law and its philosophy from age to age. Short of attaining this counsel of perfection, the Faculty felt sure that a well ordered law library should contain "an adequate representation of all existing legal systems, having due regard to their respective practical importance." They hoped to develop the library into a home for persons interested in comparative jurisprudence, a common meeting ground for teachers and students (or, better, because all are students, for those whose paths were the higher walks of jurisprudence and for the students of every day) where each class might benefit by the other's labors. The busi-

ness of their School, the Faculty felt, was not merely to teach law and to make lawyers, but, as one of the most inspired of its pupils has said, "to teach law in the grand manner and to make great lawyers." "The aim of a law school should be," said Judge Holmes, "the aim of the Harvard Law School has been, not to make men smart, but to make them wise in their calling, — to start them on a road which will lead them to the abode of the masters. . . . For whatever reason, the Professors of this School have said to themselves more definitely than ever before, 'We will not be contented to send forth students with nothing but a rag-bag full of general principles,— a throng of glittering generalities, like a swarm of little bodiless cherubs fluttering at the top of one of Correggio's pictures.' They have said that to make a general principle worth anything you must give it a body; you must show in what way and how far it would be applied actually in an actual system; you must show how it has gradually emerged as the felt reconciliation of concrete instances, no one of which established it in terms. Finally, you must show its historic relations to other principles, often of very different date and origin, and thus set it in the perspective without which its proportions will never be truly judged." "It is perfectly proper," Judge Holmes has said in another place, "to regard and study the law simply as a great anthropological document. It is proper to resort to it to discover what ideals of society have been strong enough to reach that final form of expression or what have been the changes in dominant ideals from century to century."

Perhaps it is not difficult to scoff at this plan of study. One may sincerely believe that the young man undertaking to learn the practical profession of the law, through which he is to earn his daily bread, should not be distracted by much talk of the history and philosophy of the matter. In a sense this is true. But those who are to guide his



OLIVER WENDELL HOLMES, LL.B. 1866

Associate Justice of the United States Supreme Court since 1902.
Fourth President of the Harvard Law School Association

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steps should certainly have a large view of the country through which they are to travel together. Perhaps together they may build new roads. At any rate, for law teachers, present and future, no opportunity to gain knowledge of the law as it has existed in any time or place, and of the manner of its development, can be called superfluous. The Harvard Law School would fain continue to train teachers. It has not only the intellectual needs of its own Faculty to satisfy, but it craves ability to satisfy the desire for learning of many of its own keener pupils and of those who come to its fourth year course from other institutions, that they too may thereafter impart what they have learned. The School wishes to satisfy the longing for productive research that has taken possession of so many scholars in these days when the old law is giving place so rapidly to new. The Faculty believes that "a general view of the law, its function, resources and limitations, is indispensable for a sound administration of justice, the end for which law and law schools exist." As the courts become more and more crowded with business, the judges have less and less time for full examination of the cases before them and they necessarily turn with increasing frequency and increasing reliance to the unhurried work of the legal scholar. The School aims to satisfy this demand for the work of the legal scholar and desires to make its library a fit instrument for his training, and to keep it such an instrument.

Incidentally, the collection of the legal literature of other countries than England and America has had its advantages for actual practice. With improvements in exchange and transportation, the mere business need of the United States to know the laws of its neighbors in the world has increased vastly and is increasing with ever greater rapidity. Recently the course of justice in parts of our country as far from each other as Montana

and Maine has been aided by counsel who have applied to the Harvard Law School for their authorities, in one case for an Austrian statute of many years ago concerning promissory notes, in the other for the provisions of the Italian Civil Code concerning a point in the law of wills, with the subsequent session laws. This is such service as Harvard should give. It is such service as it gave so long ago as 1844 when the great case of Vidal *v.* Girard was decided in part on the authority of a then very recent opinion of Lord Chancellor Sugden, which the judge who spoke for the court had seen in the library of the School, there being at that time no copy of the Irish report containing it in Philadelphia, where counsel for the successful party lived, or in Washington, where the court sat.

There is at least one more kind of work that the Library should undertake but which it cannot think of performing with its present income. An author catalogue of its books on the American and English Common Law was published in two volumes eight years ago. Since then more than fifty thousand volumes have been added to the library, the larger part of them, of course, within this field. The slugs used in the 1909 catalogue have been preserved, so that it should not be a difficult matter to issue a second edition. This, however, is work that will not pay for itself and the library has no funds with which to undertake it. A subject catalogue of the same books has been kept on manila slips, ready for the printer, but there is no money to publish it. A catalogue of the Dunn collection, to which many items were added from the books already here, would give a fair idea of the English law books printed before 1600; indeed, such a catalogue might be enlarged to include mention of known books that are not here. No catalogue of the books on foreign law in the library, now numbering between 45,000 and 50,000, has ever been published, although both author and subject slips have been prepared as the books

were acquired, ready after some revision for the printer if funds for publication were at hand. It is the duty of a great library to supply these bibliographic aids to the world, but this duty must for the present be neglected.

Although, when Langdell Hall was built, the Faculty cherished these higher ideals of service, it was plain that the School must somehow meet the demands for shelter of the young men who thronged its gates, and these demands could no longer be met without a new building. If the only way to get the building was through sacrifice of the higher ideals which the School had formed, the pursuit of those ideals must be left to some other institution better endowed with the means to procure the necessary tools. So Langdell Hall was built, and the School's surplus was mainly spent in the undertaking. In 1906 interest on the surplus had amounted to over $15,000; in 1908 it was less than $2500 and the average yearly return since has been smaller than that. Latterly, as the amount required for the maintenance and operation of the physical plant has steadily increased, the expenditure for books has steadily decreased. Thus, in 1912–13, the amount expended for books (excluding $10,000 given to assist in purchasing the Dunn library) was $26,997; in 1913–14 it was $18,495; in 1914–15 it was $15,349, and in 1915–16 it had fallen to $13,588. Such parsimony in the library is at present necessary if the School is to keep a safe margin of income over expenditure. But parsimony can go little further. The expenses of the library cannot grow materially less. Indeed, even if the library give over its attempt to bring to completeness some of its more important collections, *e.g.*, its collection of American statute law, and forego its desire to furnish investigators and future teachers with the materials for the study of comparative law, the expenses of the library must nevertheless constantly tend to increase. If the School is to keep its preëminence in

English and American law, old serials cannot, save in exceptional instances, be dropped, and new continuations must be added from time to time. New courts whose decisions are reported and cited appear constantly. It would be unfortunate if the School must pass them by and be forced to confess, at the last, that even in English and American reports its library is less than complete.

Speaking of this matter in 1913, and of the library's "position of primacy among the law libraries of the world," Dean Thayer said: "Through this position come heavy responsibilities. The larger a law library is, the faster it must grow. Old serials must in general be kept up, and new serials must be constantly added. What may be called the fixed expense thus inevitably tends to increase. Obviously the library should be sure of funds to meet this fixed expense. Moreover, if it is to take full advantage of its opportunities, it sorely needs a fund large enough amply to supply what may be called working capital. Much of the value of the Olivart collection is due to the activity of the Marquis de Olivart in keeping abreast of the times, and adding, at relatively slight expense, contemporary matter which might soon become costly or even not obtainable. His successor is under a moral obligation to continue that policy; but it is a policy which, here as elsewhere, calls for sums which current income cannot be expected to supply, so long as the School adheres to the policy, from which it cannot think of departing, of considering standards only and not numbers. The endowment of the library is to-day insufficient to meet even its fixed expense, to say nothing of the supply of working capital. That the library should continue largely dependent on necessarily fluctuating tuition fees is a matter of grave concern."

Further, if the library is to continue to live the vigilant life it has usually lived heretofore, it must also grow rapidly in new directions. A later chapter shows how

EDWARD BRINLEY ADAMS
Librarian of the school since 1913

RICHARD AMES
Secretary of the School since 1909

JOHN McCARTHY
At the Delivery Desk since 1883

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the creation of a great body of law outside the courts through administrative boards, and the increasing connection between law and other social sciences, are making new demands upon legal education. These demands must be met by books as well as by teachers. Opportunity knocks at the door of the Harvard Law School. The efforts making to open the door are explained in another place; the present question is, shall the door lead into well-furnished apartments? It is a commonplace that the lawyer is dependent upon books as no other craftsman. A great literature about these new aspects of the law has already grown up. To name one branch of it only, the printed reports of the various transportation commissions whose decisions are law and whose annual reports, if not law, contain the stuff whereof the law is made, probably number well over a thousand volumes. Modern developments cannot be understood and cannot be guided without access to this literature. The School must collect it at whatever expense of time, money, and space. Much has been collected, but there should be no pause. And after all, the reports of the transportation commissions are only an example of the new demands in this kind that are made upon the library and that must be met if the library is to continue to be a good workshop, the best of workshops, we like to think, for the training of the mechanics who have our future in their hands.

The conclusion is inevitable that the library should be adequately endowed, and soon. Otherwise it must forego all its more generous aims; indeed, it cannot long continue to fulfil, even tolerably well, the purposes of its existence.

CHAPTER IV

PORTRAITS AND PRINTS

THE School is fortunate in possessing a large number of portraits and prints which convey to the students the personality of past teachers, judges, and lawyers more vividly than printed books. The paintings cannot, it is true, offer any Copleys or Stuarts like those in Memorial Hall and the College Library, but they include one pre-revolutionary portrait, several good examples of the early nineteenth-century artists, and work by leading men of our own time. Still more noteworthy are the color prints and engravings, over a thousand in number. Harvard Law School has, so far as can be ascertained, a larger collection of engraved portraits of judges and lawyers than exists anywhere else in the world.

The portraits of the founders of the School and the older teachers, before the introduction of the case system, are hung in Austin library. Perhaps the most interesting is the large group of Isaac Royall and his family, painted in 1741 by Robert Feke of Newport (1705–1750), an American primitive whose works are very scarce. This is the earliest of his portraits known to exist which can be definitely dated. Feke was a sailor in early life, and received his artistic training while a prisoner in Spain. Near Royall is Nathan Dane, and just beyond him Asahel Stearns. The head of Joseph Story is by William Page (1811–1885), who, oddly enough,

began life in a law office, but became a pupil of Samuel F. B. Morse and did some remarkable work. Simon Greenleaf was painted in London by G. P. A. Healy (1813–1894), whose portraits were so numerous that he lost count of them himself. He probably painted more distinguished sitters than any of his contemporaries, but his work is not considered so good as that of Page, Harding, and Jarvis. The three great teachers of the Civil War period — Parker, Washburn, and Parsons — have been placed side by side near the entrance of the library. Besides men connected with the School, the room contains a full-length of Webster, by Joseph Ames of Boston, and another of Marshall, by Chester Harding (1792–1866). Harding was a backwoodsman, six feet three inches tall, who entered art by way of house and sign painting. One day he attempted a portrait of his wife with his sign-painter's materials, and was so delighted with the result that he started for Paris, Kentucky, set up as a portrait painter, and in six months executed nearly a hundred heads at twenty-five dollars each. During his career he portrayed most of the leaders of the country, from Daniel Boone to General Sherman. The head of Story in Austin North is also by Harding. At the end of the library is a full-length of Rutherford B. Hayes of the Class of 1845, by William M. Chase (1849–1916). The finest portrait in the room is of Henry Wheaton, by John Wesley Jarvis (1780–1834), who started as an engraver and maker of silhouettes, and became an erratic painter famed as a diner-out and teller of amusing stories. A Bohemian and fond of notoriety, Jarvis "wore a long, fur-trimmed coat, and a couple of huge dogs followed him, sometimes carrying his market basket. To his southern friends, when they passed through New York, he showed a lavish hospitality — banquets where all fluids were obtainable save water, where canvas-backs were eaten with broken-handled knives and one-tined forks, and

the soap was thrown out of the shaving mug to furnish an extra glass." Much of his work possesses an elusive quality, envied by his contemporaries and even by later artists, and the youthful Wheaton is full of vigor and promise, more alive than any other figure on the walls of Austin.

The portraits of the teachers under the case system hang in Langdell library. Those of Christopher C. Langdell, Jeremiah Smith, and John C. Gray are by Frederic P. Vinton (b. 1846), and given by the Harvard Law School Association; that of Langdell is considered especially good. James Barr Ames and James Bradley Thayer were painted by Robert Wilton Lockwood (b. 1861). The portrait of Ames was presented by students of the School during the years 1902–1903, and that of Thayer by his pupils. There is also a portrait of Thayer by his nephew, Simmons, in Austin West. The portrait of John H. Arnold, the librarian emeritus, by E. C. Tarbell, is a gift from the Harvard Law School Association, which, in the words of Dean Thayer, "has doubly enriched the School by a work of artistic excellence and a skillful likeness of one to whom it owes a large debt of gratitude." Ezra Ripley Thayer himself is beside his father, as he would have wished, bringing to mind his frequent thought that he was carrying on his father's work. This painting is by I. M. Gaugengigl (b. 1855), and is a replica of one in the possession of Mrs. Thayer. It was presented to the School by five friends of Dean Thayer: William Rand, Jr., William H. Dunbar, William G. Thompson, George R. Nutter, and Charles E. Shattuck. Those who knew Mr. Thayer receive the immediate impression that the man himself is once more before them.

In addition to the oil portraits of its teachers, the School possesses etchings of John C. Gray and Samuel Williston, and several engravings of Story. These are

hung in Langdell South. An excellent photograph of Dean Ames, given by his family, is placed at the head of the stairway in Langdell Hall, where it is seen by all who enter the Reading Room.

Mention should also be made of the oil portrait of Sir Edward Coke in the Cartoon Room, a copy from the painting in the Inner Temple, and of an admirable representation of Lord Chief Justice Holt by Sir Godfrey Kneller, now hung in Langdell Reading Room. Besides its intrinsic importance, this picture is interesting because it was bought with a legacy which Professor Jeremiah Smith received from his friend Mr. Justice Charles Allen of the Supreme Judicial Court of Massachusetts and generously presented to the Law School.

Besides its oil paintings the School has a remarkable collection of prints, interesting for their artistic qualities as well as for their legal associations. They are distributed through the various lecture rooms, but a card catalogue is kept in Langdell Reading Room, indexing each print by the name of the subject or person portrayed, and indicating in what room it is hung.

Austin North contains portraits of Judges of the King's Bench, including the Bartolozzi Mansfield after Reynolds. Other Common Law Judges are placed in Austin West, while Austin East is used for the Scotch, Irish, and Colonial bench and bar. This room contains amusing prints of Scotch advocates and an autographed letter from Daniel Webster. Readers of Stevenson's "Weir of Hermiston" will find here an engraving of the hanging judge, Robert MacQueen, Lord Braxfield, whose habit it was, when consulted as to the advisability of a criminal prosecution, to say, "Bring me the prisoners, and I will find you the law."

Langdell Center is given over to the Chancellors, some in red outline by Bartolozzi after Holbein, Nottingham and Bridgman in woodcuts, and others in steel engravings.

Over the door hang two writs of the time of Charles II and George II.

In Langdell South are American judges and lawyers, with several etchings of Lincoln, interesting prints of Webster, Judah P. Benjamin in the wig of an English barrister, and a very good etching of Wheaton made much later than the portrait by Jarvis. In this room are also hung a letter from John C. Gray on his retirement from teaching, Samuel Adams's appointment of Nathan Dane as Judge of the Court of Common Pleas of Essex County, Massachusetts, Fillmore's appointment of Benjamin R. Curtis of the class of 1832 as Associate Justice of the United States Supreme Court, and a trial memorandum in Lincoln's handwriting.

The walls of Langdell North are perhaps the most interesting of all. Here, besides engravings of many English lawyers, including Jeremy Bentham, who never tried but one case, and on losing that decided to remake the law — and did it —, are etchings of the Temple and other Inns, colored prints of the old English courts and prisons, "The Country Attorney and his Clients" by Walker after Holbein, John Wilkes flanked by two associates, and many other large engravings, such as the trials of Queen Caroline and Bainbridge, the Warden of Newgate, who was accused of cruelty to the prisoners.

Upstairs, off the Reading Room, is the delightful Cartoon Room, full of over three hundred caricatures from "Vanity Fair" of English judges and statesmen, as well as several Americans, including John Hay, and Charles Sumner of the class of 1834, who is entitled "The Massive Grievance."

The School possesses very little sculpture. It was at one time custodian of some busts of distinguished American statesmen, belonging to the College library, which were stored in the basement of Langdell Hall during the interval between the demolition of Gore Hall and the

completion of the Widener Library. Some reporter must have seen them through the window, for newspaper articles began to appear, headed, "Law School Keeps Statue of Abraham Lincoln in the Cellar." Dean Thayer was overwhelmed with letters of protest from indignant Progressives, and requests for the bust of the Emancipator from colored seminaries.

Already a great storehouse of prints, the Law School ought to become in time a gallery of Anglo-American legal history. Much remains to be done, however, before this purpose approaches fulfilment. In some fields little has as yet been accomplished — for example, autographs, although through the generous gift of Charles Pelham Greenough the School possesses a manuscript book of bail bonds containing signatures of Lord Mansfield, of Mr. Justice Buller, and of their famous contemporaries of the King's Bench. The American portion of the present collection of prints is markedly inferior to the English, and there is opportunity for the addition of portraits, views, and documents, which will serve as a continuous illustration of the development of American law.

CHAPTER V

THE STUDENTS

A CLIMB up the stairs of Langdell Hall; a step through the library to the Secretary's office; the unrolling of a college diploma; a signature on a card, — and the college boy starts to be the professional man.

Student Activities

"An exaggeration, to be sure. The law student, like the law itself, develops slowly. But occasionally, as in a decision of Lord Mansfield, the law bounds ahead regardless of precedent. Comparable to this is the effect upon the entering student of registration in Harvard Law School. Within a few weeks former mental habits of leisurely college days are effaced. He soon acquires a deep seriousness of purpose, a live intellectual curiosity, something entirely different from his past experience in the art of being educated.

"This prevailing spirit of work is the very gist of the Law School, and merits first notice in a discussion of the School as it appears to-day from the student's viewpoint. Everything else in his life at Cambridge is corollary, and few escape its grasp from the very start.

"Why does the Law School possess this faculty of making its students, for the first time in most of their lives, really desire to study, and what is more, be proud of that desire? The causes are many. In spite of a perhaps all too utilitarian undergraduate course, the student now finds for the first time something of definite

AUSTIN STEPS ABOUT 1902

Showing the students between lectures in the crowded days before Langdell Hall was built, with the fiddler in the foreground

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use to his future professional life. The joy of competition with some of the best graduates of one hundred and forty different colleges whets an appetite already sharpened by the fear of the approaching Ides of August, when report slips will drop from the ranks approximately one-third of the class who were not hungry enough, or who had not capacity enough, for study. Added to these causes is the social force of the tradition of the School. Somehow or other, studying is and always has been *the* thing to do. It is strictly *comme il faut*, as athletics, fraternities, or what not, were at college.

"While all these factors may contribute to produce the electrifying Harvard Law School atmosphere, the crowning cause is the law itself. For although, as old Lord Coke used to say on the title page of Ames' Cases on Pleading, the law may be a 'jealous mistress,' her jealousy need not often be aroused. The law is a very attractive person, 'as she is taught' at Harvard, introduced to the student by professors who command his highest respect and clad in the very latest of case-system garbs. He sticks to the law for long hours at a time from sheer enjoyment of her company.

"Indeed, the Law School acts *in personam*. It affects the conscience of the entering student. The result must be amazing to one who, after listening to contemporary critics, pictures the American college student as irresponsible and rah-rah, a spendthrift of opportunity and patrimony. The Harvard Law School is different. Its students, not content with the allotted lecture hour, usually pick the very bones of what, to the outsider, might seem a dry and already thoroughly masticated legal morsel, by congregating about the lecturer's desk in large numbers, asking questions, and arguing well into the next period. Outside the law buildings not only are the workers' backs occupied with carrying to and fro green bags stuffed with books, but their minds and tongues

are busy arguing and talking law points with fellow classmates. That center of persiflage, the college dining table, has given way to a prandial and post-prandial forum, where 'pass the bread' is smothered in questions about what the Dean said in the last lecture and disagreements as to why the House of Lords was wrong in some case just studied. The School is a veritable teachers' paradise in which discipline consists solely in advising the student not to work so hard. A School of 'grinds,' the outsider may contemptuously remark. Not so. The work, while serious, is not of the drudgery type depicted in the current anti-child-labor cartoons. On the contrary, it is set to a cheerful and lively tempo.

"There is no doubt that the law man at the School to-day works, but how does he work and what are his methods? How does the case system seem from his viewpoint? He is little interested in its scientific character or its pedagogical value. That is the view of the landlords of the system. He is the invitee upon the case-system premises, who, like the invitee in the reported cases, soon finds himself fallen into a pit. He is given no map carefully charting and laying out all the by-ways and the corners of the legal field, but is left, to a certain extent, to find his way by himself. His scramble out of difficulties, if successful, leaves him feeling that he has built up a knowledge of the law for himself. The legal content of his mind has a personal nature; he has made it himself. This independence and resulting self-confidence is the biggest thing in his life as a student. Although he cannot merely stick in his thumb to draw out a plum of legal knowledge, the greater effort has its compensation. Indeed, the independence developed is remarkable. Jones, Law 1, after a month or so, boldly asserts that the nine Justices of 'the greatest tribunal in the world' are absolutely and unanimously wrong, or that his professor, who perchance is the author of a

standard text or two, and a number of authoritative monographs and has had years of experience at the bar and in the School, is clearly mistaken in his view of this case or that legal principle.

"The notebook is the principal tool of the student. In this he writes the abstracts of the cases assigned for the day's work, what the lecturer says, and the questions and answers of those attending. In the review which starts about the first of January in contemplation of the June examination, many additions and corrections are made. The entire notebook, or portions of it, are often abstracted or summarized. Notes concerning cases or legal articles, to which reference was made in the class, are inserted; occasionally even a few words are embodied from some disdained textbook with which the notebook owner has aided his review. To be sure, the notebook is often allowed to take the place of the student's mind, and from the careful underlining and the different colored inks used in the review, it might seem in some cases that the maker was best suited for the course in Landscape Architecture. But more often the notebook is a servant and not a master. The reviewer uses his own ideas afresh and jots down questions concerning matters that he does not understand or with which he disagrees. These questions he tries to straighten out by talking or reviewing with his fellows, by reading additional cases or texts, and by conferring with his professors.

"No doubt the student's ideas of the law are often as verdant as the green eyeshades he affects in the law library. A particular course he receives at first merely in blocks. But later in the year these blocks seem to fit together into a whole. So the separate courses likewise, at the end of three years, are seen more or less as parts of a greater legal structure. What is more important, because he has learned each little part of the whole, not merely as something which is the law but as some-

thing which ought, or ought not to be the law as he himself feels it, the body of the law is to him something living. His future professional work is to be no mere skillful piecing together of static precedents, — in fact precedents, if anything, are too lightly regarded. Legal problems are to be viewed rather in the light of reason and justice.

"This attitude toward the law, present among the students no doubt for many years, is especially important as the basis of a development of more recent times which has culminated in the appointment of Dean Pound; *viz.* emphasizing the need of the law to fit itself to modern ideas of social justice, and to the present demands of complicated industrialism. This new tendency at Harvard is in some respects the opposite from the 'back to the farm' movement in other spheres. The problem is: Can the student be made to believe in a judicial system less pastoral and individualistic than in the past? The task is difficult. There is naturally a certain narrowness about legal study, a tendency to weigh questions of right and wrong and logic, bereft of their bearing upon present-day human affairs. With the exception of a few mechanical radicals among the students who question and deny everything from the start, at the beginning of the course most questions that come up are dealt with upon an assumption of the underlying principles as axiomatic. Before the first year is over, however, the study of some parts of Criminal Law and the trade disputes portion of the course on Torts has begun to awaken the student in many ways. Later work, especially in such courses as those dealing with Public Utilities, Administrative Law, and Constitutional Law, and to a less extent in the others, continues this broadening influence until often a discussion among the students, inside or outside of class, savors much of economics and sociology. Different men react upon this differently. Radicals and reactionaries develop. But whatever view prevails

Henry B. Brown

HENRY BILLINGS BROWN

Student at Harvard Law School, 1859. Associate Justice of the United States Supreme Court, 1891–1906

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as to the shade of the blots upon the escutcheon of the Common Law or the luster of the proposed jewels for the crown of the social republic, the net result among the students is a growing realization of a needed adaptation of the law to present-day conditions.

"Work at the Harvard Law School is by no means limited to what the curriculum prescribes. It is supplemented by a number of outside activities, all related, however, to legal training. The one of these which is the most important because it affects the largest number is the Law Club System. There are at present some thirty clubs in the School, composed of approximately twenty-four men each, — a 'Court' of eight from each class. Upon these clubs being mentioned, a member usually hastens to explain that the name 'Club' is a misnomer, but this is not entirely true. Although the members are usually chosen somewhat at random and without regard to social attainments, and their primary purpose is work; nevertheless at the weekly meetings and annual dinners quite a bond of fellowship grows up from the pleasure of interesting and congenial work, — much more than in the ordinary debating or literary society. The first year men in these law clubs argue against each other, within the club, cases based upon statements of fact prepared by one of the third year men or occasionally by Boston lawyers or members of the Faculty. The remainder of the club sit as Associate Justices, with the originator of the facts acting as Chief Justice, question the contestants, and render the final opinions. By this means the first year men soon gain a knowledge of the use of a law library and have practice in the preparation of briefs and the presentation of arguments. Inasmuch as the Board of Advisers, composed of a half dozen or more third year men appointed by the Faculty, have supervision of the questions argued, and pass upon the briefs, a fairly high standard is main-

tained, although some of the supposititious cases are more fantastical than usually occur on land or sea. The second and third year men enter the Ames Competition, in which similar arguments upon more advanced questions take place between the different clubs. The final round of this competition between the two clubs having the highest record often produces as much excitement as a yellow-journal-advertised murder trial, several hundred students attending.

"Then there is the *Harvard Law Review*. From the standpoint of the subscriber or reader, no doubt its value consists in its leading articles contributed by those far more learned and advanced in the law than the members of its Editorial Board, and also in the fact that its notes call attention to important recent decisions. This is only partially its value to the student. Of equal interest to him is the competition in scholarship upon which election to its Board almost solely depends; and to those upon whom the honor — or rather task — of editing it falls, it affords an experience greater perhaps than all the rest of the course at Harvard. The *Harvard Law Review* Board consists of twenty-five or thirty men who act free of faculty control, although advice and the greatest assistance is obtained from frequent conferences with the professors. The Board from month to month reads every new reported decision of all the Common Law courts of the world. Selected cases are discussed in meetings, and eventually those that seem the most important or interesting are commented upon in the *Review*. Considerable research is required of each editor to whom a case is assigned, and of the President and his assistants, who correct and revise the editorial when written. The seriousness of the writers and their independence of thought is typical of the same spirit through the School. Decisions are attacked as though the unhappy courts which rendered them would immediately reverse them-

selves upon reading the editorials. The realism of it all, the freedom from precedent, the attempt to mould the law as it ought to be, — these are things that the editor cannot but look back upon without regret in future years of practice, when his mind must follow a tortuous course among impeding state reports, guided always by expediency in his client's interest.

"The Legal Aid Bureau, a more recent acquisition of the Law School, affords experience of a practical kind to many men who do not have the advantage of the *Law Review*. In the Bureau's office at Central Square, Cambridge, the men take turns at office hours and give legal advice and aid to those who cannot afford to pay an attorney. In this way the School is of a certain use to its immediate community, and the men, in handling cases in and out of court, rub up against actual conditions.

"To complete the picture of the Law School, a word must be said about its social life, which is free for the most part from the other departments of the University. The Law Club banquets, and the Class Smokers and Dinners, bring out this side of the student to the greatest extent. Here the professors meet with the men on a basis of equality, or perhaps inferiority, in that they find themselves the butt of the jokes and songs. Some of these Smokers have developed into quite elaborate affairs, in which the talents of the students have brought out an indigenous type of humor peculiar to Harvard Law School.

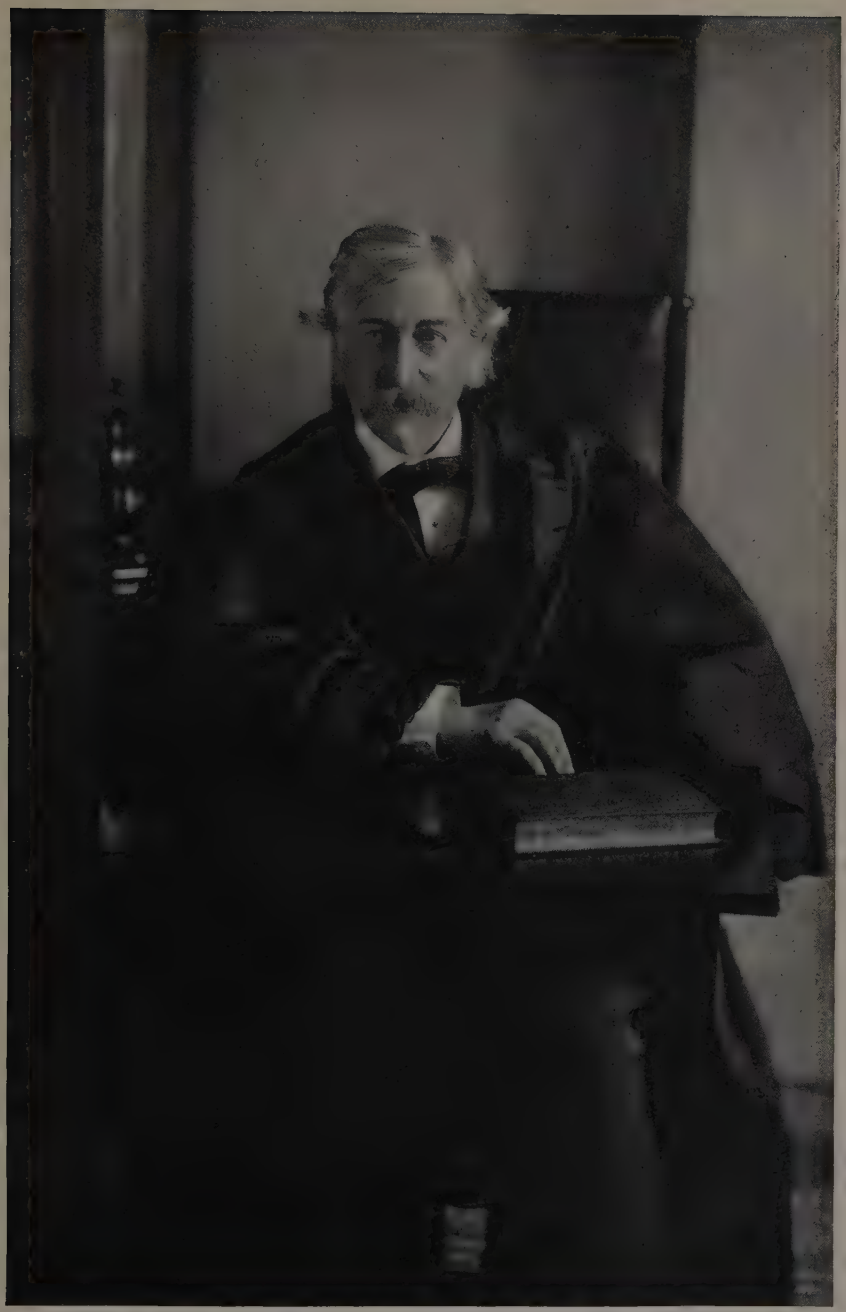
"It is not the purpose of the writer to enter into a criticism of the School from the student's viewpoint. But of course, it is not in all respects perfect. One finds the classes too large, a certain amount of clannishness, especially in the first year, among the graduates of the different colleges, and a dissatisfaction with the way this course or that course is taught. All this is but natural. It is better to have the classes too large than to have added to the Faculty any but the best instructors; for although

much is left to the students' own work, the success of the case system and its dialectic methods is entirely due to the excellence of the professors the School has and has always had in its service.

"Some students feel that the course is not practical. In a sense the graduate is better prepared to present a case before a learned Appellate Court than to enter a hand-to-hand tilt with some ignorant but stubborn Justice of the Peace; more able to write a complicated brief than to draw a chattel mortgage. But moot and practice courts and the like are at best makeshifts. The final making of the lawyer depends, as in the days before law schools, upon the law office itself, in which most of the graduates spend at least a year's apprenticeship. What is more important, the graduate finds himself the possessor of a legal mind, developed to a considerable extent, the content of which is not a store of cut-and-dried rules, learned by rote, but a living body of principles, each of which has passed the test of his own reason and sense of justice. With the increasing emphasis placed upon modern social and economic conditions and their relation to law, the graduates must be far between who are on the road to becoming lid-sitters or technical pettifoggers.

"It is with some confidence and considerable joy that the graduates set out upon their future work, not merely as lawyers, but also as citizens."

This statement of student life of the present day, written by a recent graduate of the School, offers a vivid picture which may be compared with the less elaborate sketch of a student's life fifty years earlier. "He took part in the discussion of Parliament, where political discussions were debated Friday nights; he belonged to various law clubs; he helped Professor Washburn prepare a new edition of his Law of Real Property, and worked for Professor Parsons upon more than one of his



Melville W. Fuller

MELVILLE WESTON FULLER, LL.B. 1855
Chief Justice of the United States Supreme Court, 1888–1910
Third President of the Harvard Law School Association

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law books. With all this hard work he found plenty of time for social life and was one of the best-liked men in the School."

The "Parliament" (at times called the "Assembly"), the debating club to which all students belonged, has long since passed away; the law clubs are still, as they were fifty years ago, flourishing institutions wherein the members discuss questions of law. The power of investigation which the best students fifty years ago gained from work on the legal treatises of the professors is now acquired on the editorial board of the *Law Review*. The social life of Cambridge is still open to students with social tastes and opportunities. But the simple activities which were suited to the placid law of the time are inadequate training for the lawyer of to-day, who must apply the complexities of a rapidly developing system of law to the intricate requirements of a highly organized industrial civilization. In these fifty years the School has grown, not merely in size but in function, into a highly individualized institution, with its own social as well as mental activities, its characteristic spirit, its common law and common life. On the intellectual side the students have their law clubs, their own legal periodical as the organ of their legal beliefs, their Ames Competition, their quiet companionship of the reading room, and the noisier strife of constant discussion in corridors and out of doors. After the discussions in the law clubs are finished for the year the "review sections" begin to occupy a large part of the students' time. A review section is a voluntary association of three or four men for the purpose of going over the courses of instruction. The cases are reread and stated, the class discussing renewed, errors of memory or of judgment corrected, and finally such a clear knowledge of the subject-matter of the course is obtained as the thought and study of one man alone could not give. On the social side the students

have their dining clubs and their two or three social clubs. The Law School Society of Phillips Brooks House directs their altruistic activities, giving opportunities, much used, to teach classes of foreigners or of workmen; it also maintains an information bureau and conducts a reception for new students, offers classes in Bible study and holds a course of Sunday evening talks for law students by distinguished lawyers on matters of professional interest. The Legal Aid Bureau places the knowledge and the time of the older students at the service of the poor of Cambridge, and incidentally gives to the students themselves a desirable experience in handling clients and their woes. Each of these activities is worth a further word.

Class spirit has in recent years grown up, and since 1887 each graduating class has elected a secretary and other officers, and the periodical reports of the secretaries have been valuable in keeping the graduates acquainted with one another in later years. In 1889–90 the School issued its first Quinquennial Catalogue, with a complete list of all former students, and this has been followed by five successive issues, the last in 1914.

Character of Students

The cosmopolitan character of the students has already been pointed out. During the entire history of the School they have been drawn from all parts of the country. For a considerable part of its history the men from outside New England have far outnumbered those from the New England states.

During the greater part of its history the School has had a large proportion of college graduates among its members. In the first five years of the School 81 % were college graduates; in the first five years of Story's administration they formed 75 % of the whole number; but from 1851 to 1855 inclusive only 62 %, and immediately after the war less than half of the class. From

1870 the percentage steadily increased. In 1871 it was 51 %; in 1881, 61 %; in 1891, 69 %; in 1896, at the beginning of Ames' deanship, 80 %. As a result of the graduate rule it became 92 % in 1900, and since 1905 not more than one or two students have lacked a college degree.

The number of colleges represented among the graduates has also steadily increased. In 1874 only 18 colleges were represented in the School. In 1889 there were 41; in 1892 there were 54; and the number increased rapidly to 74 in 1894 and 82 in 1895. In 1901 there were 92; in 1903, 111; in 1906, 126; in 1910, 135; and in 1911, 145. The number in 1917 is 153.

The Harvard Law Review

In the year 1886, eight students of the third year class formed an organization called the Langdell Society for the serious discussion of legal topics and for other serious work on law. Two of the members prepared essays on points of law, which were afterwards published in legal periodicals. The group also conducted a series of trials of fact which proved interesting as well as amusing, but the great service of the short-lived Society to the School was in the establishment of a *Law Review*. Mr. J. J. McKelvey, one of the members, ran across a copy of the *Columbia Jurist*, a periodical published for a few years by the students of the Columbia Law School. It occurred to him that the Harvard Law School could support its own legal periodical, and he suggested this to the members of the Society. Six of the eight members undertook to join with him in the plan and two others were added from the class. Mr. J. W. Mack was chosen business manager and the eight editors of the third year class proceeded to canvass the Boston alumni of the Law School for support of the magazine. Reasonable success having been attained in this line, and editors added from the other two classes, the first number

was published in April, 1887. The Faculty were invited to take an active part in the management, but thought "that the interests of the paper would be more advanced by their remaining in the background."

Although the idea of the magazine was taken from the *Columbia Jurist*, its form and its character were more like those of the *American Law Review* in its earlier days. Leading articles were followed by notes and other editorial matter. Mr. J. H. Wigmore suggested the digest of recent cases and being given charge of that department, originated a kind of editorial work which has since been followed in all later periodicals. Departments of lecture-notes, imitated from the *Columbia Jurist*, and of reports from the moot club courts were soon discontinued, as the magazine was found to make a broader appeal than merely to the graduates of the Law School.

The *Review* met with a moderate degree of success for a few years, until the Harvard Law School Association came to its help by entering a year's subscription for each of its members. This resulted in a large, permanent increase in the subscription list and consequent prosperity for the Review. When a considerable surplus had been earned, it was decided to put it into the hands of permanent Trustees, and Professor Ames, Mr. L. D. Brandeis, and Mr. G. R. Nutter were chosen Trustees.

In the fifteenth year of the *Review*, the Board awoke to a realization that they were no longer editing a "college paper," but a periodical for legal scholars and practicing lawyers. A complete reorganization of policy and methods took place. The somewhat unsystematic collection of material was abandoned. First year men were no longer elected. The editors were increased from fifteen to thirty, eighteen in the third year class and twelve in the second year. The criterion of choice has always been ability, largely as evidenced by marks.

The system evolved in 1902 has continued with few

LOUIS DEMBITZ BRANDEIS, LL.B. 1877
Associate Justice of the United States Supreme Court since 1916

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changes until the present time. The Board is officered by the President, Treasurer, and Editors of the three departments,—Notes, Recent Cases, and Book Reviews. The selection of leading articles is entirely in the hands of the President, who calls upon members of the Board for advice from time to time. These articles are contributed by prominent legal scholars in all parts of the world.

The Departments of Notes and Recent Cases are written in the following manner. Advance reports from every common-law court of any importance, and the chief legal periodicals, are distributed among the editors about the twentieth of the month. Each editor reads through the reports assigned to him, marking any cases which seem interesting because of the importance of the decision, the doubtful reasoning of the court, or some striking peculiarity of the facts. The standard of selection is the interest of the point involved to the profession in general.

About three or four days later the case meeting is held. This is generally divided into two sessions, one in the afternoon lasting from two till six, and the other in the evening from seven till the work is finished. Part of the board attend in the afternoon, and the remainder in the evening. At the meeting each editor gives a short abstract of the cases he has "saved." The value of the case for publication is then discussed by the board, led by the President and Case and Note Editors, and if it is thought worthy in the final judgment of the President it is "kept" for further consideration. As an additional means of collecting interesting cases, the *Review* has, in many jurisdictions, a "case reader," a lawyer of experience, practicing in that jurisdiction, who notes the important decisions of its courts and communicates them to the *Review*. The cases thus submitted are examined by the President and either "kept" or discarded.

The cases which are "kept" at the case meeting and otherwise are assigned equally to the editors, to make a preliminary report upon them. The "prelim" consists of a careful, concise abstract of the case, with a statement of the condition of the authorities upon the point as disclosed by a search through the digests, the viewpoint of a couple of leading texts, a listing of any recent treatment of the subject in the *Review*, and finally a short statement of the writer's opinion as to the value of the case for publication. The "prelim" writer reports the cases assigned to him to the Case or Note Editor, who discusses them with him and gets his views. The "prelim" serves two purposes. It aids the President and the Case and Note Editors in their decision as to the worth of the case, and it is often of help to the editor who finally writes up the case, should it be accepted.

The final selection is made in the light of these preliminary reports by the President, advised by the Case and Note Editors, and each decision thus sifted out is assigned to some member of the Board to turn into a Recent Case or a Note. The former consists of a short statement of the facts and the decision, followed by a concise comment upon the principle involved and the condition of the authorities, which have been thoroughly searched. Its object is to produce something of value to the practicing lawyer when he prepares a brief. The purpose of a Note is more scholarly. It is longer, and without omitting full examination of the authorities it goes more deeply into theory. Besides interesting points arising in the courts, any subject of current legal importance like a new Federal statute may be treated in a Note. Both Recent Cases and Notes are written after discussion with other editors.

The Department Editor then revises the material in consultation with the writer. If it is also satisfactory to the President it goes to press. The writer himself

reads the proof, and personally verifies each citation from the original report.

The increasing circulation of the *Review* under the new policy created a serious problem. The earliest numbers had been printed from type and the edition soon became exhausted. After a few years it was therefore necessary to reprint it. From that time all the current numbers were electrotyped and earlier numbers were from time to time reset and electrotyped. This process was finally completed in 1912 and, in honor of the 25th anniversary of the *Review*, a complete edition at a reduced price was issued. The publication of this edition exhausted the entire reserve fund in the hands of the Trustees, but the successful sale of the edition has much more than replaced the amount.

The contributors to the *Review* are unpaid. The routine work is done by hired clerks, but the editors receive no monetary remuneration, nor is any scholastic credit given by the School. The training received is regarded as well worth the cost.

The Law Clubs

The problem of how much time and effort to devote to training students in the machinery and methods of court practice has been a difficult one. The courses in New York and Massachusetts practice have been already described. Experience has proved that it is not worth while to spend the time to reproduce trials of fact before a jury or to require an extended study of procedure, the forms of which vary so much in the different states; and it has been a source of satisfaction that the fascination of court practice has not led students to seek more half-effective training in the practice side of the law at the expense of the lasting benefits of a thorough grounding in legal thinking. Very great benefits have been derived, however, from experience in the preparation of briefs and the presentation of

oral arguments before a judge or a court of appeal, and it is here that efforts have been made and results achieved.

In the early days of the School a moot court was a part of the regular curriculum and apparently was intended to be as nearly like an actual court as possible. This was under the direct supervision of the Faculty, and while the School was small there was no great difficulty in carrying it on, but as the numbers grew, it became a very great burden on the Faculty and it was almost impossible to give any considerable portion of the students an opportunity to argue the cases. The students began to lose interest, and furthermore a number of law clubs had sprung up which served substantially the same purpose.

Almost from the beginning of the School the students formed clubs for the informal discussion and formal argument of questions of law. The clubs have differed somewhat in the scope and intensity of their activities, but the general character has not varied much. At present each is composed of three courts, eight men from each class forming a court. The men of the upper classes act as chief justices for the arguments of the lower class courts. Each first year court has twelve arguments during the academic year on questions of law in the subjects studied during the first year. The judge who is to preside determines upon an agreed statement of facts upon which the legal question arises. One man argues on each side. Those members of the first year court who are not arguing act as associate justices. There is careful preparation by counsel, briefs are filed, and after the oral arguments each justice gives a separate oral opinion. The number of similar arguments in the second and third year courts varies in the different clubs. These clubs were at the beginning and have continued to be the result of the spontaneous enthusiasm of the students, and it has become a tradition in the School that the training

afforded by the law clubs is a most important addition to the curriculum, and worthy of much time and effort.

The first law club, the Marshall, was started about 1825 and was active until 1870. During this period several others came into existence and were more or less thriving, but the time of great growth and activity did not begin until after 1870, about the time of the rise of the "case system." The Pow Wow club, which was long the most prominent in the School, was started about 1870. Others rapidly followed; but while the moot court continued to be at least an elective part of the curriculum no efforts were made by the Faculty to increase the number of law clubs or in any way to supervise them. The three or four most prominent clubs selected the ablest men in the class, and sometimes even drew men away from the newer and less important ones to fill vacancies. Membership in one of the best clubs was a substantial honor. The first period of great activity lasted from 1870 to about 1897; new clubs were continually springing up during this period, and the interest taken by the students was keen.

The moot court was finally abandoned in 1897, and the problem was then faced of giving every student a chance to argue cases if he so desired. In order to solve this problem the Faculty took an active interest in helping the students to form enough new law clubs to take in all men who were not chosen by the older organizations. Where there had been but ten clubs before 1890 there soon were more than twenty.

It became less and less true that the ablest men were all in a few of the oldest clubs. While the interest thus became more widespread, it was perhaps not so intense as it had been. Furthermore, the growth of the *Harvard Law Review*, membership in whose editorial board was becoming a goal of student ambition, naturally took a great deal of the time and interest of some of the best

men. These factors did not at first have any substantial effect in reducing the activity of the law clubs, but as early as 1900 a decline in the interest in arguing cases in the second and third year courts was apparent. This was by no means universally true, some clubs retaining their best vitality; but by 1910 it was generally felt that although the first year men were still kept busy, the law clubs were by no means so valuable as they had been. This was the low ebb. With the institution of the Board of Student Advisers and the Ames Competition, the tide turned.

On March 8, 1910, the Faculty passed the following vote, establishing the Board of Student Advisers.

The Advisers

"*Voted:* that throughout the academic year 1910–11 additional provision shall be made for encouraging among first year students early and intelligent use of the law library and also for rendering the work of the law clubs efficient; and that to this end there shall be appointed six advisers, being students of at least two years' standing in 1910–11, and that the duty of each adviser shall be (1) to explain to all inquirers the arrangement of books in the reading rooms, the scope of digests and of other works of reference, the mode of finding authorities upon any question stated to him, and the arrangement of briefs for club courts; (2) to keep until the end of May two office hours each week in the reading room of Langdell Hall at a table to be assigned; (3) to serve on the Committee on Law Clubs and, if requested, to sit as justice twelve times for clubs of first year students; and (4) to spend in addition twelve hours yearly in other work to be determined by the Law Faculty."

The number of the advisers is now eight. They have entire charge of the work of the law clubs and of the Ames Competition. Each adviser has a certain number

William H. Moody

WILLIAM HENRY MOODY, LL.B. 1877
Associate Justice of the United States Supreme Court, 1906–1910

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of clubs under his direct supervision and encouragement. The system has been found to furnish an excellent means of communication between the student body and the Faculty. By their formal reports and by informal conferences they keep the Faculty informed of the needs and desires of the students, and interpret to the students the principles of faculty action.

The first chairman of the Board was Claude R. Branch (1910–11). His successors were James B. Grant and Lawrence G. Bennett (1911–12), Zechariah Chafee, Jr. (1912–13), Harvey H. Bundy (1913–14), Chauncey Belknap (1914–15), Spencer B. Montgomery (1915–16), and Joseph Nye Welch (1916–17).

The Ames Competition

In 1910, after the death of Dean James Barr Ames, Mrs. Ames, in fulfilment of a wish expressed by him, gave the sum of $10,000 for the use of the Law School. There was no restriction contained in the gift, — the income was to be applied annually to any purpose which the Faculty might deem beneficial to the Law School.

Dean Ames always took keen interest in the work of the law clubs formed by students for the argument of moot cases, and had been lavish of his time and strength in encouraging their activities. The members of the Faculty were unanimous in believing that the activities of these clubs should be encouraged, and that it was appropriate to use income accruing from Mrs. Ames' gift in giving prizes for excellent work done in the law clubs.

On May 2, 1911, the Faculty voted that two prizes of $200 and $100 respectively be given in each year, until otherwise ordered, to the winners in a competition between law clubs formed or to be formed by students of the School, such competition to be subject to certain regulations.

Experience had shown that students were usually

keen about work in law clubs in their first year, but that their interest was less in the second year. This was due, in part at least, to the fact that throughout the first year it remains quite uncertain what men will rise to the surface and prove to be the cream of the class. The man is rare who, upon entering the Law School, would consider it beyond the range of reasonable probabilities that he should so rise to the surface. Since work in the law clubs is recognized as an important aid to a student's development, most first year men are eager to share in the benefits. After the members of the Faculty have, through the marks upon the examinations at the end of the first year, given to the students an external estimate of their legal capacity, a good many, even among those who passed the examinations, are disappointed at finding themselves rated so low. It is hard for them to take the same interest in their work, particularly in the work within the law clubs, participation in which depends entirely upon their own volition, although most men who are disappointed at the results of the first year rally well, go at their work again in grim determination, and the records of the School show many instances where such men have effected substantial improvement in their standing in the second and third years.

These considerations moved the Faculty to frame the regulations governing the Ames Competition so that the prizes should be awarded for work done by students in the second year. The first year work was indirectly affected, however, because under the regulations no second year club could compete unless it had a creditable record as a first year club.

The competition itself was an elimination tournament. The advisers, subject to the approval of the Faculty, framed moot cases for argument. At each argument two representatives of one club were opposed by two representatives of another club. No representative of a club

could argue more than once, until at least six men from the club had argued. The judges were to be selected by the competing clubs, or to be assigned by the advisers. In the final round there were to be not less than three judges. The judges in making their awards were to consider the ability shown in the preparation of briefs, in presenting arguments, in accurately and succinctly stating the authorities cited, and in meeting questions put by the court during the argument. The advisers were to regulate the competition in all matters not specifically provided for in the regulations.

In the year 1911–12 twenty-one second year clubs entered. The moot cases were framed on points relating to the work of second year men. The first prize of $200 was won by the Choate Law Club, represented in the final round by M. M. McDermott and M. C. Lightner, and the second of $100 by the James Bryce Law Club, represented by Marvin C. Taylor and T. Justin Moore. The judges in the preliminary rounds were two third year students and either an attorney at the Boston bar or a professor in the Law School. The judges in the final round were Hon. Henry Newton Sheldon, of the Supreme Judicial Court of Massachusetts, Dean Thayer, and Professor Edward H. Warren.

In the year 1912–13, the competition continued under substantially the same regulations. Twenty-four second year clubs entered. The first prize was won by the Beale Law Club (W. H. Greenleaf and Jeff Myers), and the second by the Bruce Wyman Law Club (H. J. Brandt and P. D. Wesson). The judges were Hon. Frederic Dodge, United States Circuit Judge, Professor Eugene Wambaugh, and Arthur D. Hill, Esq., of the Boston bar.

In 1913–14 the faculty decided that the prizes should be given, not in money, but in books, in which special name plates should be inserted. Twenty-four second year clubs entered. The first prize was won by the

Kent Law Club (Montgomery B. Angell and Chauncey Belknap), and the second by the James Bryce Law Club (Julius H. Amberg and Clarence B. Randall). The judges were Hon. William Caleb Loring, of the Supreme Judicial Court of Massachusetts, Dean Thayer, and William G. Thompson, Esq., of the Boston bar.

In 1914–15 the regulations were substantially changed. As the competition was an elimination tournament, one defeat put a club out. This was thought to be undesirable. The added interest given to the work of the second year clubs by the Ames Competition was short-lived for many clubs. Moreover, as each club was composed of eight men, it made too much depend on the work of the first two men who represented the club. The competition was therefore changed so as to consist of a qualifying round robin tournament of six rounds, each competing club to take part in six arguments; and an elimination tournament to be argued at the beginning of the third year by the clubs that had qualified during the second year.

In 1914–15 twenty clubs entered the qualifying tournament. Four, the Kent, Marshall, Moody, and Westengard clubs, qualified for the elimination contest the next year, in which the first prize was won by the Kent (F. L. Daily and H. A. Scraggs), and the second by the Marshall (E. O. Tabor and M. V. Rinehart). The judges in the final round were Justice Loring, Hon. James Madison Morton, Jr., United States District Judge, and Hon. Charles Thornton Davis, of the Land Court of Massachusetts.

In 1915–16 seventeen clubs entered the qualifying tournament, and seven of these qualified, the George Gray, Lowell, Kent, Thayer, Warren, Williston, and Witenagemot. The elimination tournament next year was won by the Lowell (Alvin C. Reis and Conrad E. Snow), and the second prize by the Witenagemot (Leon-

ard M. Rieser and Urban E. Wild). The judges were Justice Loring, Justice Dodge, and Justice William H. Sweetland, of the Supreme Court of Rhode Island.

In the main reading room in Langdell Hall is a tablet upon which are inscribed the names of the victorious clubs and their members. The briefs in all Competition cases are collected, bound, and preserved in the Library. Copies have several times been made for members of the bar engaged in litigation upon similar points of law.

Harvard Legal Aid Bureau

In 1913 the Legal Aid Bureau was formed, as part of the activity of the Law School Society of Phillips Brooks House; it is now an entirely independent organization. It offers some of the older students an opportunity of engaging in welfare work while at the same time they acquire professional experience often more enlightening than can be gained in the specialized practice of the modern city office.

The Bureau has a consultation office in the building of the Prospect Union, in Cambridgeport, where office hours are kept for four hours during each day. Clients are met, claims sifted and adjusted, and if necessary actions at law are instituted and carried through. The Bureau is incorporated, in order that it may act as attorney in fact for clients. In 1915–16 the bureau had 147 clients, instituted six suits (of which none were lost), and recovered for clients $1647.50.

The Bureau is a self-perpetuating body of twenty-seven members, who are chosen from the second and third year classes on a basis of scholarship and adaptability for the work. A board of directors, consisting of three officers and three directors, has general supervision. The board does not, except in special cases, control the details of any case. The client who comes into the office of the Bureau is the client of the member then in charge. Upon that member individually rests the responsibility

for the proper disposal of the case. Expenses are paid by contributions from students of the School. This method has proved unsatisfactory and the work of the organization has been hampered by lack of funds. It has been necessary for members of the Bureau to make advances on several occasions.

No extra-curriculum activity in a law school can justify itself except by intimate connection with the work of the School, and it cannot survive if it demands too much of the student's time. Members of the Bureau are on duty at the consultation office for two hours on alternate weeks. If the burden upon one man becomes too heavy, a portion of his cases are assigned to another. Thus a member of the Bureau is able, by the sacrifice of comparatively little time, to supplement the theory of the law with practice and to do his part in the great social service which is now performed by the legal aid societies of the country.

Success of the Students in Practice

The success in practice of the graduates of the School has been marked. Various class secretaries, among them Edward H. Letchworth of the class of 1905, have collected statistics showing the professional incomes of their classmates at different periods after graduation. The Secretary of the Law School, Mr. Richard Ames, made a more general investigation of the professional income of graduates of the School for ten years, and the results were published in Volume 27 of the *Harvard Law Review*. He found that of about 800 men who answered his questions the average earnings during the first year were about six hundred and fifty dollars, and that the average earnings increased by about five hundred dollars a year throughout the period. When one considers that this represents the experience of eight hundred men, the success of the graduates of the School is surprising. It is certainly a

AUSTIN HALL IN 1916

Showing part of the open space used for kicking football
Langdell Hall appears at the right

JARVIS TENNIS COURTS

Much used by Law School men. Perkins Hall in the background, "Gus" the time-keeper in the foreground

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very exceptional lawyer whose income after ten years of practice exceeds five thousand dollars a year; yet this is the experience of the average graduate of the Harvard Law School, practicing in city or country.

The School after Graduation

A college president once remarked that a law school is not an Alma Mater, but a mother-in-law. Nevertheless more than one graduate of the Harvard Law School has admitted that he was happier there than in college. Here is an educational institution with none of the emotional accessories supposedly necessary to create loyalty, unless, indeed, we except the School cheer, "Offeree, offeror, quash it, nisi, Harvard Law!" It has no campus or stadium or class day. Only once in years have its students been gathered in one room. It inspires devotion solely by its wonderful spirit of work in companionship, and it is this which the alumnus remembers. Nor is beauty of setting altogether absent. Often in later years, after a hard afternoon on a brief, he will wish that he might look across Langdell Library to a classmate, and go out with him for a swing around Fresh Pond, or over the hills beyond Belmont, and return past "Blackacre," as Professor Gray's house was known to us, and homeward along Brattle Street, agreeing heartily with his traditional opinion that it is "the finest street in the world."

CHAPTER VI

THE HARVARD LAW SCHOOL ASSOCIATION

THE establishment of an association of the alumni of the Harvard Law School was no easy task and was finally accomplished after at least two failures. The Story Association of 1851 died from the controversy over slavery stirred up by the addresses at its one dinner. In 1868 a Harvard Law Association was formed by George S. Hillard, Emory Washburn, and others. Two organization meetings were held, a constitution adopted, and officers elected, Benjamin R. Curtis being chosen President. The following year, the Association dined at the Parker House in Boston, listened to many eminent speakers, and shortly afterwards sank into oblivion.

On July 21, 1886, a self-appointed committee of graduates of the Harvard Law School, consisting of Darwin E. Ware, John C. Ropes, Henry W. Putnam, Joseph B. Warner, Louis D. Brandeis, William Schofield, and Winthrop H. Wade, started a movement for the organization of an Alumni Association of the Law School, and on August 9 of that year issued a printed circular, inviting the coöperation of all graduates and former members of the School in carrying out this object. The circular set forth that the general object of such an Association should be to bring together all those members of the legal profession who were connected by the common bond of having made their preparation, or some part of their preparation, for the practice of

the law, in the Harvard Law School, and to be the means of increasing the influence and usefulness of the School. Responding to this invitation, about one hundred and fifty graduates and former members of the Law School met in Boston on September 23, 1886, and took the preliminary steps for the organization of the Association. They adopted a constitution and voted to hold the first general meeting for the election of officers, and the approval of their work of organization, at Cambridge, on November 5, 1886, upon the occasion of the celebration of the 250th anniversary of the founding of Harvard College.

Thus the Harvard Law School Association began its existence. Pursuant to the call of a committee on arrangements, of which Robert M. Morse was chairman, about four hundred graduates and former members of the School assembled at the Law School on the appointed day, enrolled themselves as members of the Association, adopted the constitution and elected officers, which included James C. Carter, president; Louis D. Brandeis, secretary; and Winthrop H. Wade, treasurer. The constitution welcomed to membership "all graduates, all former members, and all present members of the Harvard Law School who have been such for at least one academic year exclusive of Commencement Week." The annual dues were one dollar, which could be commuted at any time by the payment of a life membership fee of fifteen dollars, afterwards reduced to ten. The constitution declared the objects of the Association to be the advancement of the cause of legal education, the promotion of the interests and usefulness of the Harvard Law School, and the promotion of mutual acquaintance and good fellowship among its members.

At the close of the business meeting the members marched to Sanders Theatre and listened to an oration by Judge Holmes. This was followed by a dinner in

the Hemenway Gymnasium, presided over by Mr. Carter, the newly elected president, at which several addresses were made.

On April 1, 1887, the Association issued a circular announcing a membership of 558, and the preparation for the first time of a catalogue, edited by John H. Arnold, the Librarian of the School, of all the students who had ever attended the Harvard Law School. Similar catalogues have since been issued every five years by the Law School at the same time with the Quinquennial Catalogue of the University. The Council of the Association also printed and distributed to its members a Memorial Report of the recent celebration, including the oration of Judge Holmes and other addresses.

In order to encourage original work among the students of the School, the Association, on November 19, 1887, appropriated from its income the sum of $100 as a prize for the best essay to be contributed by a member of the Law School on a subject selected by a Special Committee of the Council, and this prize was first awarded to Samuel Williston, LL.B., 1888, for an essay on "The History of the Law of Business Corporations prior to the Year 1800." This action led, two years later, to the generous offer of C. C. Beaman, of New York, to provide the same sum as an annual prize for five successive years, under similar conditions to be prescribed by the Council. The winners of this prize in subsequent years were E. V. Abbot, C. E. Shattuck, Ezra R. Thayer, and O. R. Mitchell. The Council of the Association next turned its attention to enlarging the resources of the Law School itself, and in the first annual report of the Treasurer, issued January 2, 1888, announced a gift of $1000 subscribed by ten members of the Association to increase the instruction in Constitutional Law for the next academic year.

JAMES COOLIDGE CARTER, LL.B. 1853

First President of the Harvard Law School Association

(*From the portrait by John S. Sargent.*)

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DALLAS, TEXAS

On June 26, 1888, the Association met again at Cambridge for an oration and dinner.

By June 15, 1890, the total membership of the Association had mounted to 1319 members, comprising the names of nearly one-half of the entire number of graduates and former students of the Law School then known to be living. The third annual report, issued the same day, announced an anonymous gift of $600 from a member to defray the expense of sending the *Harvard Law Review* for the following year to all members of the Association not already subscribers, and to various public and law libraries; a gift was also announced of $1000 a year for five years from another member to support a course in Massachusetts Practice, beginning the next year.

The Association once more met in Cambridge on June 23, 1891. During the same year the Council completed the publication and distribution of the Catalogue of the Association. The Association also contributed from its funds about $600 toward the expense incurred by the Law School in publishing its second Quinquennial Catalogue, in return for which the names of all the members of the Association in the geographical list of the Catalogue were printed in small capitals, a practice followed in all subsequent issues, so that the Association was henceforth relieved of the expense of printing and distributing any Catalogue of its own. The Law School assumed the entire expense of later issues of the Quinquennial Catalogue, including a gratuitous distribution to each member of the Association.

In 1893 the Council raised by voluntary subscription, from members and from students in the School, the sum of $1517 for an oil portrait of Dean Langdell by F. P. Vinton, which was presented to the School. This portrait was reproduced in the *Harvard Law Review*, and a copy sent to each member of the Association. It

appears as the frontispiece of this volume. During the same year the Council appropriated from its current income $1000 to establish a course in the Conflict of Laws for the next academic year.

The year 1895 was marked by a distinguished event in the life and history of the Law School and the Association. Langdell completed twenty-five years of service as Dean of the School, and the Association celebrated the anniversary on June 23 by the greatest meeting in its history. Nearly six hundred of its members gathered in Cambridge, to listen to an oration in Sanders Theatre by Sir Frederick Pollock, Corpus Professor of Jurisprudence in the University of Oxford, and afterwards to dine together at the Hemenway Gymnasium. Responding to the toast given in his honor, Dean Langdell gave a brief but memorable account of his work at the School.

In 1896 the Association distributed among its members a memorial Report of the Langdell Celebration. In this year James C. Carter retired, after serving ten years as the first president, and Joseph H. Choate was elected in his place. In 1898 the Association contributed to the School the sum of $600 to provide a course of lectures by A. V. Dicey.

In 1902, through a committee of graduates, it raised funds for an oil portrait of James B. Thayer, by Lockwood, which was formally presented to the School at the celebration on June 28, 1904. This celebration included an oration by the Secretary of War, Hon. William H. Taft, and an address by Chief Justice Fuller, the newly elected president of the Association, Dean Ames, and others. A report of the meeting was subsequently sent to the members.

On May 10, 1905, an important report was presented to the Council by a Committee, suggesting various uses of the surplus funds of the Association, and after

full discussion the Council voted to invite Professors John C. Gray and Jeremiah Smith to sit for their portraits, which were painted by Vinton and later presented by the Association to the School.

The next general meeting of the Association was on June 28, 1910. An address by Hon. George W. Wickersham, Attorney General of the United States, was followed by a dinner at which Honorable Francis J. Swayze presided. Resolutions were adopted on the death of Dean Ames and speeches made by the new Dean, Ezra R. Thayer, and others. A report of the meeting was subsequently distributed.

At the 1911 meeting Justice Holmes became the fourth president of the Association.

In 1913 the Council appropriated the sum of $5000 towards the purchase of the Dunn library for the School. This used up the greater part of the accumulated income, and for some years the activities of the Association were confined to a luncheon in connection with the annual meeting on the day before Commencement, and on Commencement a room in the yard was always kept open for members of the Association. Afterwards the plan of Commencement arrangements was changed and the Association has joined in contributing to the general Commencement spread and other arrangements for all the classes and departments of the University.

Shortly before Dean Thayer's death the growing problems of the School and the necessity of developing a more continuous and better-informed interest among the alumni with a view to more coöperation with the Faculty in meeting these problems, led Thayer to turn to the Association for assistance, and the Council began to consider the matter in connection with the intended celebration of the centennial anniversary. His death, of course, interrupted and delayed the development of his plans, but the Council continued to discuss the

best method of carrying out his wishes and suggestions of making the Association a more active organization than ever before. The result was that in the notice of the annual meeting to be held in June, 1916, a proposal was inserted for an increase of the annual dues to two dollars and the life membership fee to twenty-five dollars, so that the Association might gradually accumulate a surplus which could be used for any opportunity that might thereafter arise to benefit the School or otherwise further the purposes of the Association. The Council sent with this a letter from a member of the Association suggesting the publication of a quarterly pamphlet containing some of the current law writings of the Faculty and others, as well as current information in regard to the School. The circulation of this letter served its purpose in provoking discussion among the alumni, a considerable number of whom attended the annual meeting and luncheon that year. As a result of the comments, criticism, and suggestions then made, the proposed plan of a quarterly periodical was abandoned, and in accordance with a suggestion from Professor Williston a plan for an occasional publication was adopted. An appropriate beginning was made by the publication and distribution to the entire alumni of the School of a memorial pamphlet containing a biography of Dean Thayer, with his portrait and reprints of some of his writings. In the spring of 1917 Dean Pound's report to the President of the University was also sent to the entire alumni. It became necessary, on account of the War, to abandon the centennial celebration, but the Association commemorated the School's hundredth and its own thirty-second birthday by printing and sending to every alumnus the advance sheets of the Centennial History of the Harvard Law School. The present enlarged and completed volume will be placed in the hands of all members of the Association.

Joseph H. Choate

JOSEPH HODGES CHOATE, LL.B. 1854
Second President of the Harvard Law School Association
(From a photograph taken in 1895 by Falk, New York, copyright.)

Such has been the history of the first thirty-two years of the Harvard Law School Association. The Association, like the School itself, is ready to study and help to meet the problems within its field which are arising and will arise during and after the War in the future history of the law and of the school. In this work the School, and through it the country, needs from all its members and friends in every conceivable way, as never before, "that aid and assistance which," as Mr. Carter, the first president of the Association, said at its first meeting, "the graduates of any educational institution are always capable of affording it."

CHAPTER VII

THE FUTURE

IF American law to-day is compared with American law in 1817 and each is compared with American law in the last two-thirds of the nineteenth century, the analogy in the one case and the contrast in the other case suggest much with respect to the immediate future of the Law School. In 1817 economic conditions had given rise to widespread dissatisfaction with law and general distrust of lawyers. Political conditions had brought about hostility to English law. Judges and legislators were influenced by this popular feeling and an undeveloped bar was not strong enough to resist it. Moreover, the administration of justice was in large part executive or legislative rather than judicial. Divorce jurisdiction was chiefly in the legislature; legislative new trials were not definitely superseded until 1842; legislative jurisdiction in insolvency had still some years of life before it, and in more than one state appellate jurisdiction was in the legislature or in one of its branches. Furthermore, with a few conspicuous exceptions the courts were in great part manned by untrained magistrates. James Kent became Chancellor of New York in 1814, and he tells us that for the nine years he was at the head of the judicial system of that state not a single decision, opinion, or dictum of his predecessors from 1777 to 1814 was cited to him or even suggested. So completely did American law make a new start in the fore part of the nineteenth century.

Yet nineteenth-century America proved to be an age of lawyers. By the end of the second third of the century the working over of the traditional English material to make a common law for the new world had been definitely achieved. The administration of justice had passed definitely into the hands of lawyers. In nineteenth-century politics the soldier was the sole rival of the lawyer, and from De Tocqueville to Bryce observers were agreed as to the leadership of the lawyer in American communities.

In 1917, on the other hand, dissatisfaction with law and distrust of lawyers are no less marked than a century ago. Social conditions and industrial conflicts have made more than one tenet of our legal system unpopular and have roused strong opposition to the fundamental dogma of the supremacy of law. Once more judges as well as legislators are inclined to yield undiscriminatingly to a blind pressure, and an unorganized and heterogeneous bar is in no position to resist. Moreover, what is more significant, the administration of justice is passing in large measure from judicial tribunals to executive boards and commissions.

A century ago the materials for an adequate body of law were at hand in the traditional course of decision in the English courts. It was the task of the law school to make these materials accessible in a form in which they could be used, and it was the task of the courts to develop them by judicial application to actual causes. Academic exposition, enriched in the hands of Story by comparative law, played a larger part in the building of American law than has commonly been perceived. More than anything else, the books of our great nineteenth-century text writers saved the common law in the critical period of American legal history. They provided guides for judge and practitioner, well written, learned, well ordered, and, as things went then, well reasoned. With

copious references to the civil law that seemed to make it clear that the resources of comparative law had been exhausted, they stated none the less the common law as worked out in the English courts. Thus at the crucial time the common law was so presented as to make a reception of that system easy, and the energies of judges were turned to the right channel of applying common-law principles to concrete cases. Until we had a body of judicial decisions able to stand by itself such aid was indispensable. Without it, it is doubtful whether we should live under the common law to-day. As Coke summed up the development prior to his time and thus furnished the basis for a juristic new start, so these text writers, of whom Story is easily first, both in the quantity of his writings, and, on the whole, in quality, summed up English case law of the seventeenth and eighteenth centuries and made it available as the basis of a new start in America. Much that in form was the work of the courts, in reality was taken already shaped from the books that represented the best work of the law teacher.

To-day also the materials for an adequate body of law are at hand, this time in the judicial decisions in the English-speaking world which set forth the experience of English peoples in administering justice in the nineteenth century on the basis of the traditional English legal thought. If the continuity of that tradition is threatened, if the rise of boards and commissions threatens a reversion to administration of justice without law, the common law is to be saved exactly as before by making its materials accessible in a form in which they can be used, and so presenting them as to make them available as the basis of another new start. Such is the first task of to-morrow for the American teacher of law.

In order to do for the law of the twentieth century what the law teachers of the past did for the law of the nineteenth century, our professors of law must be afforded

HARVARD UNIVERSITY, CAMBRIDGE, MASS.

A view of Harvard University between 1832 and 1840 when Judge Story taught law in Dane Hall, which is shown at the extreme right of the picture. (*From an old print.*)

opportunity for research. No longer can they print their lectures, as given in the class-room, and in so doing give us useful textbooks for court and practitioner. The conditions of modern teaching wholly preclude this. Hence teaching and writing, much as they should go on together, are distinct processes. Nor may we overlook the importance of the latter. The stress of business in the courts of to-day compels the judges to work rapidly with a minimum of deliberation, without the elaborate argument of every detail which was possible a century ago. Thus, at a time when constructive work of the highest order is called for, the very circumstances of judicial administration preclude it. Yet more difficult questions are arising than any with which American judges had to deal in our classical constructive period — the period from the Revolution to the Civil War. Hence it is not likely that American courts will much longer be able to do more than give authoritative sanction to what has been worked out and formulated by others. Already the papers of professors of law in academic legal periodicals are cited and relied upon with significant frequency. Neither legislation nor judicial decision, with no stimulus from without, could have done for our law of evidence what has been done by James Bradley Thayer and by Wigmore. We must bear in mind that to-day the teacher of law works in the conditions of permanence and independence that were the strength of the common-law judge. He may do historical, critical, and analytical work that the judge cannot do. Moreover, he deals with the law or with great departments of the law as a whole, while the judge may look only at a fragment. It would be a misfortune if the power of our teachers of law to engage in research were to be curtailed at the very time when it has come to be most needed.

Not only must we turn once more to the law teacher to make the traditional materials of our legal system avail-

able for a new start in American law, even more must we turn to him for juristic development of the law which is growing up outside of the courts. The Federal Interstate Commerce Commission, established in 1887, and the English Railway and Canal Commission, established in 1888, have been followed in recent years by Public Service Commissions of one sort or another in substantially all English-speaking jurisdictions. The whole administration of the law of public utilities is coming to be committed to such bodies. The Federal Trade Commission, recently set up, is likely to absorb the larger part of the practical administration of the law governing the activities of great industrial enterprises in their relations with their competitors. Boards of probation and parole are acquiring the power to determine the duration and the nature of penal measures after conviction, and the judicial sentence is becoming a mere form. The whole subject of master and servant, so far as the law of torts is concerned, has been taken from the courts and confided to industrial commissions. And it is not unlikely that the administration of justice in other aspects of that relation will ultimately be confided to nonjudicial boards or commissions, as the temporary expedients of boards of conciliation, arbitration and the like give way to legal modes of adjusting industrial disputes. A clear body of law has grown up already as the result of the experience of a generation in the Interstate Commerce Commission, a body of law is forming under our eyes through the administration of Workmen's Compensation Acts by industrial commissions, and the exigencies of general peace and good order, if nothing else, must lead before long to a new body of law governing industrial disputes. In all these matters, however much society may turn for a time to the unfettered common sense of the layman, we may be assured that in the long run the paramount social interest in the general security will require administration of justice

according to law. In the end the trained lawyer will be called upon to formulate in legal principles the results of administrative experience, and in practice this means that the teacher of law must put system behind them and give them a rational development. Meanwhile there will be much to do along more familiar lines. Reconciliation of the new principles behind our Workmen's Compensation Acts with the general law of torts is a pressing problem. Collective bargaining is likely to compel us to think over again the whole subject of juristic personality in Anglo-American law. Criminal law and procedure call for the best efforts of thoroughly trained common-law lawyers acquainted with the social science of to-day. On the legislative side, the organization of courts, procedural reform, and penal legislation and administration make demands which are not to be met by legislative reference bureaus, manned by laymen trained merely in the political and social sciences, but call for the best in training and talent that our law schools can bring forth. Moreover, the gradual codification of our commercial law which began in the last decade of the nineteenth century is calling for a deeper and more critical knowledge of comparative law than has been worth while in the past.

All these things force us to consider how the Law School is to preserve the old professional training with all of its old effectiveness for its own purpose, and yet meet the demands upon the teachers for research and publication, and the demand upon the School for the training of lawyers who shall be of service in solving the social problems of the time as well as successful in practice. At first sight it might appear that radical changes in legal education will be called for, and there are many who so urge. But such a view is in reality superficial. The strength of the Law School has been in the continuity of development that has made each period in its history grow naturally out of what went before; that has utilized the past intelli-

gently; that has known how to work over given materials to make them available for new purposes. Its very effectiveness in handling the law of the nineteenth century is a guarantee of ability to turn this law to intelligent account as an agency of justice in the twentieth century. Hence the right line of development is not to set up a pretentious "school of jurisprudence" with elaborate courses in every phase of legal science and perhaps a number of "research professors." In a sense every professor should be a research professor; equally also he should be a teacher of the common law. For the life of the law is in its concrete application, and research divorced from the living law that must be taught in the professional curriculum will not be likely to achieve the results which alone could justify the large endowments demanded.

Nor is it in the right line of development to dilute the general professional curriculum with elaborate courses in jurisprudence, philosophy of law, comparative law, theory of legislation, criminology and the like. Such a plan runs counter to the whole experience of American law-teaching since Langdell. It calls for abstract courses, where over forty years of experience have taught us that legal instruction to be effective must be concrete. It calls for courses detached from application in the everyday work of tribunals, whereas Langdell's method requires us to study the applications and to derive our principles by critical investigation of the law in action.

We may look, therefore, for a natural and gradual development of the School along lines upon which it has already begun, holding fast to its traditional policy of not attempting all things, but instead attempting a few things of the highest moment and doing them as well as possible. Thus the regular dogmatic instruction will change from time to time with the progress of the law. Much that we have had to teach in the past is already yielding in importance to new elements in the legal system. Much of our

nineteenth-century law will presently be as obsolete as the learning of real actions and of the feudal law of estates in land which held so large a place in the curriculum of the Law School a century ago, or the elaborate and involved procedural law which was so important fifty years later, or the pedantic law of bailments which has given way to a modern doctrine of the obligations of public service. Such changes have gone on from time to time during the whole history of the School. More significant will be the development of graduate instruction and the fertilizing of the everyday professional teaching by ideas developed therein and by research, as the teachers give part of their time to the ordinary professional courses and part to graduate instruction and to research. Thus adequate provision will be made for jurisprudence, philosophy of law, comparative law, theory of legislation, administrative law and criminology, without yielding to the fallacious notion that no one may be expected to know anything unless he has had a formal "course" in it. Thus also more solidity will be given to the work of research and to graduate instruction. The one will grow naturally out of problems raised by study and teaching of the everyday law; the other will be given definiteness by the connection with concrete applications. Again, the teacher and investigator will be under the pressure of having to argue out his theories with students thoroughly trained in the dogmatic law, and this will make for clearer and better thinking in the purely theoretical courses. Above all, however, the teaching of the ordinary professional courses will be fertilized. The theoretical courses will make themselves felt in each dogmatic course. Each set will react upon the other, so that if the one will be rendered more exact and solid, the other will be made more scientific and liberal. For we must not forget that properly trained teachers with the right spirit may make courses in contracts or torts or

conflict of laws or constitutional law do the work of courses in philosophy of law, comparative law, and jurisprudence, may make a course in criminal law and procedure effective as an introduction to criminology, and may make a course in the law of public service companies an effective introduction to administrative law. Thus the everyday subjects of the professional curriculum may be made to achieve more for the general body of students than might be hoped for through formal detached courses in those subjects. The Law School has been proceeding along this line for some time.

Let it be repeated: the Law School is not to abandon all that has been learned since Langdell and give way to the idea that there must be a formal course in everything. Rather it will continue to seek to train a body of men who have so mastered the art of legal reasoning and have secured so solid a foundation in legal science and so firm a grasp of the materials of our legal system that they may approach new problems in new fields and old problems in unfamiliar fields with assurance and achieve results of real value. But this does not mean that the significant movements in legal science that have related it to the other social sciences and are making it over are to be ignored. It means rather that these movements are to be treated, not as revolutionary but as evolutionary.

Even with a program relatively so modest, it must not be expected that the Law School can go on permanently without an endowment adequate to the task. For it is not reasonable to rely upon tuition to do more than provide for the ordinary professional teaching. As numbers increase teachers must be added. Under normal circumstances, the ratio of teachers to students had already reached the minimum limit in 1916–1917, so that the mere guarding of what had been achieved in the way of thorough professional training called for a more reasonable ratio of teachers to students apart from

any question of writing and research. In 1901–1902 the ratio of teacher to student was one to thirty-six. In 1916–1917 it had become one to seventy-two. In no other department of the University was the ratio at all so high. In the Medical School it was one to five; in the School of Business Administration, one to ten; in Arts and Sciences, one to eighteen, in all cases excluding those giving instruction who were not upon Faculties. Moreover, in 1916–1917 classes had substantially reached the limit of size consistent with effective teaching and division of second-year classes into sections, as had long been done with first-year classes, was coming to be necessary. Thus there was an obvious and insistent call for more teachers, even if the Law School were content to shirk its duty in a new period of legal growth and to neglect its opportunities in the development of administrative law, of criminal law, of comparative law, and of the science of legislation, which is going on about us.

So far as the newer subjects, not immediately professional, are taught as such, i.e., formally, they must be taught chiefly to graduate students in the fourth year. This graduate fourth year is expensive and may not reasonably be expected to sustain itself through tuition. Yet, apart from the considerations set forth above, it distinctly adds to the usefulness of the School. From the school year 1911–1912, when it was inaugurated, to the school year 1916–1917, there were thirty-six candidates for the Doctor's degree, of whom eighteen were successful. Of these twelve were teachers in other law schools. While doing this work, however, there has been no disposition on the part of the School to depart from the policy of making professional training distinctly its main purpose. To keep up the graduate instruction the professors have added it to their regular teaching work. Except the Carter Professorship of Jurisprudence

there is no provision for it in the way of endowment, and from the beginning the occupant of that chair has done his full quota of the ordinary professional instruction.

It must be remembered that when Langdell Hall was built out of accumulated surplus it added greatly to the expense of physical maintenance. Moreover, the necessary cost of physical operation has increased very much in the past decade. Thus in 1899–1900 the total charge for such items as care of the buildings, heating and lighting and other general expense was only $3500. In 1916–1917 it was, roughly, $21,000. This does not mean that the School has been conducted extravagantly. On the contrary, severe economy has been practised. But there are now two buildings to be cared for instead of one, the library of 51,000 volumes in 1899–1900 has grown to one of over 170,000 volumes, labor and materials cost far more than they did a decade ago, and an increased student body beyond a certain point involves expense out of proportion to the increased receipts from tuition. In addition it is equitable that the Law School bear a proportion of general University expense and the expenses of the University have necessarily increased with the higher cost of all things. How unhappily this increase of operating expense operates is illustrated by the case of the library. In fifteen years the total annual expenses of the library rose from $19,000 to $35,000, but the amount spent for books hardly increased. Over half the present expenditure is for salaries and wages, binding, and stationery. Thus the power of the library to take advantage of its opportunities in connection with recent developments of the law is seriously impaired. In effect the rise in the cost of physical maintenance and operation must be met by curtailing the purchases of books and by imposing added burdens upon the teaching force.

Dean Pound

Brannan

Wambaugh

Beale

Williston

Hill

Westengard

E. H. Warren

J. Warren

Frankfurter

Scott

Chafee

THE FACULTY IN 1916

(*All but Mr. Chafee were photographed in the lecture room by Edward G. Fischer, 1916.*)

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Increase of tuition is not the remedy. The cost of legal instruction, especially to students from the South and West, is as high as it should be. It would be better to cut off the graduate work entirely and leave this opportunity of service to some other school than to drive away one of the best elements in the student body which already finds much difficulty in making ends meet under the expensive conditions of life in Cambridge. Once more the Law School may properly appeal for help from the outside. After the long struggle in the early years of the institution to get on without material resources, the gift of Nathan Dane made possible the school of Story and Greenleaf and Parsons and Washburn, whose achievements are written large in the history of American law. Later when Langdell had won in the struggle to establish scientific methods in legal education, the gift of Edward Austin enabled the School to make his work effective and made possible the systematization of the maturity of our law and the correction of the older learning through history which was called for by the conditions of the latter part of the nineteenth century. To-day the need is for endowment. At present the School's capital is comparatively negligible. Its main reliance is upon tuition. The total endowment of Harvard University consisting of income-yielding funds is over $28,000,000. The Medical School, with 358 students in 1916–1917, had then an endowment of $3,632,000. The Law School, with 856 students in 1916–1917, had then an endowment of $620,000, not including $100,000 earned by the School itself and set aside as a book fund. In other words, the endowment of the Medical School was $10,145 per student, while the endowment of the Law School was $724 per student. After a century of service to legal science which has led the great English legal historian to link the glory of Harvard with the glory of Bologna and of Bourges, the

Law School may confidently appeal for that endowment which is claimed as of course and is possessed by every other form of serious educational endeavor; without which no educational enterprise of moment may expect to achieve adequate results under the conditions of to-day.

APPENDIX I

LIVES

OF

HARVARD LAW SCHOOL TEACHERS

ADAMS, BROOKS. A.B. 1870; student at the Law School, 1871–72; Lecturer on Constitutional Law for the academic year 1882–83, during Professor Thayer's absence in Europe. Mr. Adams went to the Geneva Conference as secretary to his father, Charles Francis Adams. From 1873–81 he practised in Boston. He has written several books on the economic interpretation of history and law. From 1904 to 1911 he lectured at the Boston University School of Law.

ADAMS, JOHN CLARK. A.B. 1839; LL.B. 1843; Instructor for the last part of the academic year 1845–46 to assist Greenleaf after Story's death; died in New York City, 1874.

ALLEN, FREDERICK HUNT. Born, New Salem, Massachusetts 1806; A.B. University of Vermont. He was a leading member of the bar in Bangor, Maine, and was appointed University Professor of Law for the academic year 1849–50. He died at Boston in 1868.

ALVORD, JAMES CHURCH. A.B. Dartmouth College 1827; studied at the School in 1830. After Ashmun's death, in April, 1833, he was engaged during the rest of the academic year. He died at Greenfield, Massachusetts, in 1839.

AMES, JAMES BARR, second Dean of the Harvard Law School, was born in Boston, June 22, 1846, and died at Wilton, New Hampshire, January 8, 1910. He prepared for college at the Boston Latin School. In the summer of 1863 he passed the examinations for Harvard College, but his health failing at the end of the first term of his Sophomore year in the Class of 1867, he obtained leave of absence for a year, the greater part of which he

passed on a farm at New Ipswich, New Hampshire. In March, 1866, he returned to Harvard and joined the Class of 1868. He won numerous prizes and honors, played on the Harvard Nine, and was a member of Alpha Delta Phi, the Institute of 1770, the Hasty Pudding, the Natural History Society, Delta Kappa Epsilon, and Phi Beta Kappa. The year after graduation he was an assistant instructor in E. S. Dixwell's School, in Boston; he then went to Europe for travel, and for study at the German universities, from July 1, 1869, to September 1, 1870.

In 1870, on his return from Europe, he entered the Harvard Law School. It was an interesting and a critical moment in the history of that school. A young New York lawyer, Christopher C. Langdell, had just been made Dean, a regular course of study and examination for the degree had just been introduced, and Part I of the first case-book, "Langdell's Cases on Contracts," was presented to the students. The use of this book was a touchstone of intellectual ability. To the great majority of the class it was mere folly; they wished to learn the law as the older professors in the school had settled it to be, and they felt sure that no way was easier, quicker, or surer than that of listening while these professors told them. Langdell's courses were soon practically deserted by all except a few devoted admirers, whose distinguished career at the bar and on the bench has justified their choice. The most devoted of all, and the one whose devotion was most effective in securing the success of the new method, was Ames. He was an indefatigable worker in the School, as throughout his life. He studied faithfully not only Langdell's courses but those of the other teachers as well. He was active and earnest in the work of his law club. He was at the same time an instructor in modern languages in Harvard College, and gave a considerable part of his time to teaching; six hours a week in the last months of his first year, and twelve hours a week in his second. He stayed in the school for a graduate year, and at the same time taught in the college two courses in history, — a history of England in the seventeenth century and a history of medieval institutions.

During this first year of graduate study he was made Assistant Professor of Law, having proved his quality as a teacher by his years of service in Harvard College. His appointment as Assistant Professor was a remarkable step for the Law School and the University to take. Up to that time the University had never appointed as teacher of law a man who had not been in practice.

JAMES BARR AMES IN 1874

(From a photograph taken a year after he began teaching in the School.)

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His appointment was strongly urged by Dean Langdell on the ground that Ames had a remarkable legal mind, and was an extraordinarily successful teacher; and the Corporation and Overseers decided to take the risk for five years on Professor Langdell's and the President's testimony. The consent of the Board of Overseers could not have been obtained, if an assistant professorship had not been an office terminable in five years. Of this appointment President Eliot in his next annual report said:

"The gentleman who is to bear the brunt of this new experiment in the constitution of a Law Faculty has some unusual qualifications for the place, for he is not only distinguished as a student, both in College and in the Law School, but he has had more than two years' experience as a teacher in the College; the experiment will therefore be tried under favorable conditions."

It soon appeared that Ames's mental gifts made him a remarkably successful teacher under the case method, which was then beginning to demonstrate its power of training young men for the best work in the legal profession. So striking was Ames's success in making the students think for themselves, and get a mastery of the new method, that he was promoted to be full professor one year before the end of his five years' term as assistant professor, with the cordial approval of students, professors, and governing boards.

This first appointment was made in 1877 at a time when no endowed and named professorship was vacant. Two years later he was transferred to the Bussey professorship, and in 1903 he became Dane Professor of Law, thus arriving finally at a famous professorship which had been held in succession by Joseph Story, Simon Greenleaf, Theophilus Parsons, and Christopher Columbus Langdell. Among the professors of Harvard University there is a distinct preference for an endowed and named professorship, for the reason that an endowed and named professorship connects the new incumbent with the series of eminent men who have already held it. To succeed Professor Langdell in the Dane professorship was a distinct pleasure and satisfaction to Ames.

On the retirement of Professor Langdell from the deanship in 1895, Ames was made Dean of the Law School, and thereupon became in every sense the leader and head of the School.

He had married, on June 29, 1880, Miss Sarah Russell of Boston. They had two sons, Robert Russell Ames and Richard Ames, now Secretary of the School.

Ames was born a teacher; and no one who has ever been connected with the School, as his colleague Professor Gray has said, had so happy a faculty of making the students think for themselves. He loved to teach, and he was a masterly teacher. He would bring out an idea, and the idea would seem entirely reasonable. He would bring out another idea, and that, too, would seem entirely reasonable. Gradually it would dawn on the student that the two ideas were quite inconsistent, and that he must decide which was right. The student was interested, stimulated, tantalized. The lectures by the Dean, especially in the course on Trusts, caused great mental disturbance, not to say anguish. He baptized men in brain fire. He was the ideal teacher, courteous and patient. If he led the student to the brink of a precipice, he did not let him fall over: he never failed to indicate the path back to safety. Modestly, in all discussions, he placed the student on his own level; both, apparently, were groping in the wilderness for the truth; and while he would give possible clues, he was ever ready to discuss the student's suggestions and to follow them until it became apparent to the whole class that they led only to confusion. Then, through further questioning, he gradually disclosed the true path to the light. And if, at times, one or the other man wandered away from his leading and opened up new roads to the goal, his acknowledgment was as quick as it was hearty. He aimed not so much to impart information, as to develop the analytical powers of the men, to make them think as lawyers. He questioned much; he answered little. Those who came to hear the law laid down went away to ponder what it ought to be. He loved the battle of wits; but he never argued simply for the sake of victory. He helped men in many ways, but most of all because he made them help themselves. It is a great deal easier for a teacher to state his own views to students than to get them to think for themselves. His views of the law were very positive, but he always kept them in the background until he had got the students to exercise their own minds on the problems.

No greater tribute to his power and success as a teacher could be given than that of Professor Kirchwey of Columbia University, who knew him only as a friend and fellow-teacher in later life.

"Perhaps it is rather a matter for congratulation that Ames never fell a victim to the academic superstition that the true and only end of scholarship is the production of printed matter. His writings were only the by-product of his real work, chips from

his workshop. His workshop was the classroom and his real work the forming of the minds that committed themselves to his influence, and all of his scholarly investigation and research was only preparation for this high and serious task. Into this he threw his great powers and in this he found the complete reward of his labors.

"It is by no fortuitous chain of circumstances that so many of his pupils have become instructors in law schools. By his spirit and high example he magnified the office of the law teacher and exhibited it as a career worthy of the highest talents and the most exalted aspiration for public service. He realized, as few of the guild had done, what a social force may lie in sound legal instruction. Maitland's maxim, 'Law schools make tough law,' became in his hands a principle of action. He was not content to have the school with which he was so long connected a nursery in which to breed practitioners and train them to their highest efficiency; he would have it a seat of legal influence, a force in the amelioration and amendment of the law. And so it came to pass that his social conscience, his lofty conception of personal obligation, his legal ideals, have become a part of the living creed of hundreds of strong men who have gone out from his instruction to become members and leaders of the bar, judges, and teachers of law in all parts of the land. To few men who work for the future is it given to see the fruition of their labors in their own day. Thrice fortunate, he lived to see the principles worked out in his studies, the legal doctrines expounded to a generation of law students, beginning to shape the course of legal development and to take root in the law of the land. Well might he have retorted to those who would have turned his powers to 'productive work': 'So that I train your lawyers and judges, let who will write your books.'"

In order to freshen and widen his knowledge of the law it was Ames's habit from the beginning of his career as a teacher until the end, to change, from time to time, the subjects which he taught. He rarely taught identically the same subjects two consecutive years. He also rarely took up a subject without teaching it at least several years, as he deemed that necessary in order to get a full grasp of its principles. As a result of this habit there were very few courses in the curriculum of the school at the time of his death with which he had not made himself familiar by giving instruction in them; and those few he hoped at some time to investigate. He often said that he meant some time to teach

property, criminal law, and the conflict of laws, in order to complete the round of his studies.

During all of Ames's life, after he first took up the study of the law, he was an assiduous reader of the decisions of the courts; and a retentive memory enabled him to preserve in his mind the results of this reading, and often to recall the volume where the case he wished was to be found. He was omnivorous in his reading of law reports. When he was a young man he made a practice of taking the Year Books to his summer home and literally went through them, making the notes which afterwards he partially elaborated in the essays on legal history which distinguished the early volumes of the Harvard Law Review. But it was no mere curiosity about ancient facts that led him to this study. It was his business to know the law of the present; he cared for the law of the past only for the light it threw on that of to-day. For years he examined each number of the National Reporter System as it appeared, and noted every case in which he was interested on a slip of paper. The accumulations of the last year or two of his life filled several drawers of his study desk. This habit of examining decisions gave him a familiarity with current law which lawyers in active practice sometimes fondly believe can better be secured at the bar; he was a master of the actual condition of the authorities. His colleagues frequently remonstrated with him for spending so much time in merely collecting authorities and printing them in notes; but he said that they were on his mind, and he must print them to get rid of them.

By these methods he grew in scholarship, and acquired a store of analogy and ability to follow a principle through its widest applications; and what he had himself mastered he taught his younger colleagues as well as his pupils. All of his colleagues could, and did, discuss with him the most knotty problems of their several specialties with certainty of getting aid. It was his singular patience in this discussion and exposition of legal principles with his colleagues that has created at Cambridge what may fairly be claimed to be a school of legal thought as well as a law school. His thoroughness of historical training, his breadth of study, his mastery of modern authority, gave him a readiness in the use of his knowledge. He always had his learning in hand. He could discuss a question fully, and after dropping it take it up again a year or five years later with an immediate and perfect familiarity with the whole question. No difficulty

AUSTIN STACKS IN THE EARLY NINETIES

When Mr. Ames joined the Faculty, all the offices for professors were already occupied, so he placed a table and a chair in Dane stacks and worked there. He continued this practice in Austin Hall, and the younger men subsequently did likewise. Mr. Ames' desk is in the foreground, covered with books just as he often left it. Behind are the desks of Mr. Wambaugh, Mr. Thayer and Mr. Williston. The large amount of light in the Austin stacks and the projecting shelf about waist high (shown in the photograph) enabled the professors to take books out, place them on the shelf, and read them standing, without the delay of carrying them to a desk. The windows looked across the Common, not yet broken up by the subway. Great as are the advantages of Langdell Hall, it has far less charm than Austin as a place to work.

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could be raised which he did not think out to the end. He would come into the stack of the school the next day, or the next week, with a solution which he had thought out in bed, or while he was running to luncheon, and the discussion was resumed.

His familiarity with the principles and decisions on the various subjects which he taught was increased by the preparation of case-books. Many courses when he first assumed them were not provided with case-books, and he took enthusiastic pleasure in preparing them. Preparation of a case-book by him meant going over substantially all the cases on the subject to which the book was devoted. A few selected decisions he printed for his students to read; the rest he arranged in elaborate annotations to the cases which he printed. In all work of this sort which he did the analysis and arrangement of the subject were of primary importance to him. His mind was thus furnished with an orderly scheme of his subject as well as with the authorities upon it.

Though not a trained civilian he was a good linguist, having taught Latin in a preparatory school and French and German in Harvard College as a young man. He could, therefore, read easily foreign books on the Civil Law, and throughout his life it was his habit when puzzled by a question of theoretical jurisprudence to see if light could be obtained from the writings of Continental lawyers. It was largely owing to this habit and the benefit which he felt might be derived from it that the library of the Harvard Law School owes its extensive collection of treatises, periodicals, reports, and statutes of the modern Civil Law.

Ames was fitted as are few for original research, endowed with unrivaled power in extracting sound principles from the bewildering maze of decisions, and skilled in the highest degree in generalization. He never practised at the bar, and was a legal philosopher rather than a lawyer. In some ways this marred his efficiency, but in other ways it increased it. He took broad views which could be taken only from heights to which few, if any, practitioners could ever rise. He viewed the law as a whole, and he searched for the great principles that underlay it. In constructive legal imagination he has probably never been equalled by any person learned in the common law. One of his youngest colleagues said that he had "the most suggestive mind with which I have ever come in contact."

He loved to evolve and apply a legal principle. Once satisfied that a certain principle was sound, he would look for applications of it in all branches of the law, and his enthusiasm would lead him

to believe that judges had acted on the principle in deciding certain cases where (in all probability) the judges had been profoundly unconscious of any such principle. This tendency grew on him in later years. But it was hardly to be expected that a mind could be so original and constructive without this fault. He did not state the authorities — he illuminated them.

His ofttimes novel theories, especially in the law of trusts, are gradually gaining recognition in the courts. No other man has so influenced the development of the law of *quasi*-contracts in this country, both directly and through his students and colleagues. These subjects engaged him, because they, more than any others, gave larger scope for his insistence on the ethical aspects of the law and better opportunity to make legal principles produce just results.

His direct influence on legislation began with the searching criticism to which he subjected the Uniform Negotiable Instrument Act in a series of articles published in the Harvard Law Review. Unfortunately they came too late to effect much needed changes in its provisions. But even though his influence was but slight in respect to this legislation, it was profound on the further work of the Commission on Uniformity of Legislation. He not only participated therein as Commissioner from Massachusetts, but either personally or through his disciples, who have drafted all of the subsequent acts, he has had a predominating influence in shaping both the form and the content of this work, destined to be the foundation of the commercial law of the United States.

Ames's work as Dean of the Harvard Law School and friend of the students was the real expression of his genius. During the years of his leadership the standards of scholarship required for admission to the School and for securing its degree were continuously made more severe. His faith that excellence would always win recognition was unquestioning and inspiring to others. He never doubted that the more membership in the School meant to a student and the severer the test required for its degree, the more eager good students would be to resort to the School. Accordingly he had no doubt or hesitation in requiring a college degree as a requisite for admission to the School, and he was the least surprised of the Faculty when this requirement was almost immediately followed by a large growth in the numbers of students. The exclusion of all special students who could not comply with the tests required of students in regular standing, and the exclusion

from the School of all students who failed to pass examinations in at least four full courses each year, were other rules of far-reaching effect started by him and carried into effect with good results during his administration. A poor but able and ambitious student was better served, he thought, by helping him to meet severe requirements than by excusing him from them.

Beside his constructive work in shaping the policy of the School in such vital matters, Ames's influence was constantly felt both by the Faculty and students of the Law School. He made it his business as well as his pleasure to keep on intimate terms with each of his colleagues, to inform himself of the work and plans of each, and to further them so far as possible. In this way he maintained and developed the *esprit de corps* of the Faculty.

His intercourse with the students was more important. In no institution of learning could the relation between Faculty and students be more friendly and natural than in the Harvard Law School to-day; and this is very largely due to Ames. When he became Dean, he deliberately and gladly put away all his plans for study and writing, and devoted his life to the service of his pupils. The task of his life had seemed to be the fashioning and perfecting of the law; it now became the formation of the mind and character of lawyers. He refused to fix office hours, and put all his time at the service of his pupils. He was always accessible to them; and his chief regret in leaving Austin Hall for Langdell Hall, the new building of the School, was the difficulty it put in the way of easy access for the students to the professors. He refused to give up any detail of administration into the hands of a secretary if it would prevent his personally talking to a student concerned. Thus, all questions arising in regard to the construction of rules were generally decided in interviews with him rather than with a minor official. He seldom dictated anything to a stenographer. He personally administered the scholarships offered by the School, and the loan fund (a fund to supply loans to students to be repaid by them after they have established themselves); and he did not even buy a book of blank promissory notes — the bodies of all the notes are written out in his own hand. With infinite tact and patience he instructed stupidity and reasoned with prejudice. His devotion to his pupils meant giving up his future reputation as a great legal author. He never murmured but once, when a bore wasted all the morning which he had hoped to use for some pressing work; and he repented his lament before it was fairly uttered. All students in doubt or

difficulty, or pecuniary need, laid their difficulties before him with assurance of sympathy and, if possible, of help; yet he was never weak or careless in giving help. His sympathy was always controlled by justice, and his idea of justice was not simply that each applicant should be treated as well as any other applicant under similar circumstances, but that he should be treated no better than other applicants had been. His position often compelled him to say disagreeable things, and when he felt it his duty to say something which he knew must be unpleasant to the hearer, he never hesitated to say it. He had, however, in a rare degree the faculty of saying such things without causing personal animosity, because it was always evident that his own statements were based on a sense of duty. His hold upon the students was thus made very strong by their absolute confidence in his sympathy and in his sense of justice. In the last years the interruptions were so constant that he could hardly find a minute between nine o'clock and five for his own work. This was a hardship, for he loved his work, and had much to do. He always looked forward to the time when he had finished just the little case-book he was at work upon, so that he might devote his time to partnership, to trusts, and above all, to legal history; he hoped to write on them, he said, before he set out on the long journey. He promised his colleagues again and again to give up the making of case-books and get down to serious work — after just this one more. But in spite of desire for serious scholarly work, he gave up his time without a murmur, deliberately and understandingly, to his administrative tasks. He chose to be the friend of his pupils rather than the great author he might have been; and to elevate the character of the bar by the example of an upright life filled full of the spirit of equity and love rather than by writings that should illuminate the science of law.

He was particularly interested in the Law Library. Up to the time he became Dean the income of the School had been limited, and no expenditure could be made in purchase of books which was not deemed necessary. Langdell had greatly increased the library, both in number of books and in quality, during his deanship, and had wonderfully improved it considering the small funds available for its extension. But while Ames was Dean the School increased so rapidly in size that its income was far greater than its expenses. The Faculty supported him in the feeling that the purchase of books and the building-up of a great library was a proper use for funds contributed by law students in return for

their tuition. It became his ambition therefore to gather together the greatest law library in the world, to the use of which scholars everywhere should be welcome and provided with every facility for investigation. A systematic effort was accordingly made to build up the library in every direction in which legal scholarship could be interested in its increase. With the help of a librarian whose ability as a collector of books is distinguished, he succeeded during the fifteen years of his incumbency of the office in making a collection of books on English and American law that probably is already unsurpassable, and he also gathered together a remarkable collection of books on foreign law. His work was not complete; the collection of books must always go on; but the position of the School Library as one of the great law libraries of the world has been fixed as a result of his efforts. The first part of a printed catalogue of the books, issued a few months before his death, including in two volumes the author-index of the books on common-law, was pushed through by his enthusiasm and determination, Every visitor to the stack of the school is surprised at the extent of the collection, and the whole stands as one of the greatest monuments of his many-sided mind.

During the earlier years of his teaching he was interested in the Harvard Law School only. Its methods were on the defensive; other schools and the bar generally were opposed to it; and he, like Langdell, preferred to keep out of controversy by merely doing the work of the School and paying no attention to matters outside. But with the beginning of the acceptance of Langdell's method elsewhere his feeling changed. As his pupils began to teach in other schools he became interested in their success; and as he was applied to by schools throughout the country for teachers he began to see that good influences must be prevailing elsewhere, and good work must be doing. He began to attend the meetings of the American Bar Association, and to extend his acquaintance with teachers elsewhere. The broadening of his acquaintance and knowledge of the work of other teachers was good for him. He became more helpful, and his influence was greatly extended. No one could know him without recognizing his genius; and his advice was sought more and more, and his views obtained a wider vogue. Teachers from other schools, greatly to his delight, began to visit the Harvard Law School, to investigate its methods and get the secret of its success. And it was an equal pleasure to him when several of his younger colleagues were invited to visit one and another school in the West and give them there at first hand

the real Harvard teaching. He lived to see his own pupils deans of ten of the leading law schools, and teachers in almost all of them; and every pupil carried into his teaching not only the methods but the ideas of his master. In this way the bar of every state is feeling directly the influence of his thought and study.

The very great influence which Ames acquired over his students and the members of his own and other faculties who came into personal contact with him was only in part due to his great learning. He was a man of charming manners and most attractive personality; at once tender and virile, full of humor and kindliness and strength. His voice was soft and well modulated, his smile was winning, and his manners were so modest as to be almost shy, and yet they were dignified without being in the least constrained. But perhaps the chief reason for his extraordinary personal charm was his genuine simplicity. He was always gentle of speech, quiet in manner, attentive to the person who was addressing him, and fully alive to the honorable requirements of the situation. Under all circumstances he was a gentleman, and a man of good will. His courtesy was not a matter of form, for he was most informal and homely in his manners; it came from the heart and was the outgrowth of his kindliness of spirit. His gifts though many were not showy, and to make any conscious effort to exhibit them would have been abhorrent to his nature. He was always ready to keep silent when under no duty to speak. If some one else wished to take the foreground, Ames was ready to stand in the background and, if necessary, give a little quiet assistance to the man who was in front; yet no one was long associated with him without recognizing his quality and being inspired by it.

No man ever was less formal. So long as he was sure he was not infringing upon the rights of others, he was oblivious to their comments. He would go at a dog-trot through the streets of Cambridge, or even Boston, without its ever occurring to him that he might be making people stare. He absolutely lacked self-consciousness about unessentials; but no man could be more punctilious with regard to a thing that might hurt the feelings of another. On anything that seemed to him to involve a matter of principle, however, he was firm as adamant; and legal rights appeared to him to involve principle. A neighbor could have the coat off his back if he needed it; but if he stopped up a right of way it was war to the bitter end.

His standards of conduct were the highest, both for himself

and for the profession of teaching. No merely intellectual powers could compensate in his judgment for the lack in a teacher of a strong sense of duty and honor. He had an almost over-refined sense of personal honor and integrity, and if he was ever unjust it was toward some one who he thought fell below the sound standard of truth and duty. He now and then judged a man by a very little thing, a chance word or a thoughtless act which seemed to him to indicate a selfish or corrupt heart. But in spite of the sometimes slight ground for his opinion, he seldom, if ever, erred in his condemnation. He was more apt to be unduly kind to his imperfect fellows. He was very fond of the society of his friends; and he had that rarest of qualities, a genuine interest in the problems of others engaged in work similar to his own.

All through his life he was possessed of great bodily vigor. The captain of his baseball team in college, he retained his interest in athletics to the last. His services as chairman of the Athletic Committee are well known to all Harvard men. He was a little out of sympathy with what he regarded as excesses of modern college athletics, but he still enjoyed a good game. His special delight was in farming. He had spent a year of ill health while in college on a New Hampshire farm, working hard with the other hands, and in the course of a year fully reëstablished his health. He spent every summer in farming, first at York and later at Castine. There he lived a delightfully free life, working in the hay-field or chopping in the woods all day, and only breaking the long hours at noon by a vigorous swim in his mill-pond; but devoting his evenings and rainy days to the study of law, and particularly of legal history. Until his duties in connection with the meetings of the American Bar Association called him away, he spent the whole of every summer in this delightful refreshment. All his life he kept his body in sound condition by physical exercise. He seldom walked. He ran regularly across the field between the School and his house, and even through Cambridge and Boston. When remonstrated with for his hard and steady work and warned that he would have to take a rest, his answer was an offer to run a two-mile race with the remonstrant, and he would doubtless have won it.

His skill in business affairs was not inconsiderable. When he printed his first case-book he never expected any return from it, and at first he was out of pocket. His "Bills and Notes" did not pay for itself for several years. But with the spread of the case system to other law schools and with the increase in numbers at

Cambridge the sales grew enormously, and his income from the sales of his books doubtless exceeded the amount of his salary for many years before his death. He invested wisely, and was not a poor man when he died. But a large part of his income was not invested for himself. He was one of the most charitable men alive. He gave to everything he thought good. He was liberal in his contributions to his church, to his charities, and to all objects of civic improvement. To the Law School he was one of the greatest benefactors. He contributed money regularly for the purchase of expensive books for the library, which he did not feel quite justified in buying with the funds of the school. But the poorer students knew most about his generosity. The loan fund, while he administered it, was never empty to a worthy applicant; and it is larger by many thousand dollars by reason of his anonymous contributions.

He was unalterably opposed to anything like show or display, and refused to advertise the School in any way. When Langdell Hall was opened, and the Faculty voted to celebrate the occasion by an oration, he acquiesced and invited an orator; but he was immensely relieved when the orator was unable to come. This quality was an aspect of his personal modesty. Anything which savored of self-praise was most distasteful. The memory of his life and works will be cherished where he would have it, — in the hearts of his pupils.

His utter devotion to the teaching of law meant that law and the Law School were never out of his thoughts. He himself thought that he had long seasons of rest; not physical rest, certainly, for in summer on his farm at Castine no hired hand worked harder about the daily tasks of the farmer. He loved strenuous physical work as he loved to wrestle with a legal problem or to help a student. But this manner of life did not mean mental rest, for it was not inconsistent with constant thought and pondering on intellectual problems. Truly, as he said, his was an unusually full life, and he had been able to accomplish more than most men; and so for forty years without intermission he devoted himself to the law and the Law School.

After the school year was well under way, in November, 1909, he found himself unable to apply his mind to his work, and this was soon followed by aphasia. The physicians he consulted gave him no hope of immediate improvement. Accordingly, at the weekly luncheon of the Law Faculty, just as the lunch was finishing, he leaned forward in his chair and said quietly, "I am very sorry

to say that I must leave the Law School. It may be only a short time, till June or next year, or I may not be able to come back at all. I have been examined by three physicians, and none of them can tell me what is the matter with me. I find I can't remember names. I can't recall the name of any one of you here without extraordinary effort. It has taken me three hours to prepare a lecture that I've usually prepared in half an hour. I must go away at once. Now I don't want any of you to be unhappy about this. I am not at all unhappy myself. If this is the end, I have not a word of complaint; I shall have had long years of service, and far more in my life than most men ever have. I must leave you to make provision for the School."

ARNOLD, JOHN HIMES,[1] A.M. 1902, "Librarian of the Law School, through whose keenness in pursuit and skill in buying that library has become the best collection of common law books in existence,"[2] was born in Portsmouth, Rhode Island, April 4, 1839. He was educated in the public schools, and afterwards attended the University Grammar School at Providence and The Rhode Island State Normal School. He was a teacher in various public schools in Rhode Island for eight years, and was afterwards associated with Joshua Kendall in his private school for boys in Cambridge, for seven years. On September 1, 1872, he began his service as Librarian of the Law School, which then possessed only 15,000 volumes. He acted also as Secretary of the School until 1899; and gave faithful and exhausting service as editor of the Law School Quinquennial Catalogue from its beginning in 1886. He resigned July 1, 1913, leaving one of the largest and most valuable collections of law books in existence, assembled under his own direction, and the greater part bought by him in person or on his own order.

Great collectors of books there have been, from Grolier to Huth and Hoe: but here was a collector who brought together 150,000 books, including an unusual proportion of rarities; who bought with great judgment and skill; who spent at least a quarter of a million dollars on books, the market value of which is now three or four times that amount; who had wonderful skill in finding needed books, however rare; who was thousands of miles distant from his principal sources of supply.

At the beginning of his service Langdell had just become Dean

[1] A large portion of this life is reprinted from an article, "How Mr. Arnold Collected the Law Library," Joseph H. Beale, 22 Harv. Grad. Mag. 38. 1913.
[2] President Eliot, in conferring upon Arnold the degree of Master of Arts.

of the School; and Mr. Arnold's apprenticeship was under Dean Langdell. The *res angustae scholae* at that time prevented a liberal expenditure for books; and Langdell's canny Scotch thrift saved what money there was from being wasted. He taught Mr. Arnold to buy from the English second-hand catalogues, and several times sent him to buy in England. He also sent Mr. Arnold to auction sales, and such sales became one of the principal feeders of the library. Mr. Arnold, therefore, at the beginning of his service learned to search for old books at the sources of supply, and to buy carefully; lessons that he never forgot. He has remained throughout an indefatigable searcher and a careful buyer.

Successful purchase at auction demands much more than care. It demands experience, a cool head, a knowledge of books, appreciation of present and future needs, quickness of thought, good judgment, and above all courage. A timid buyer loses the bargains. Few librarians have proved successful bidders, and such purchases are usually and wisely left to agents. But Mr. Arnold had professional skill, judgment and courage in bidding. He often took advantage of a slimly attended sale to buy books at a low price in anticipation of future needs. He picked up rare books for a song under the very nose of "Plunger Smith" — being one of the very few men who have caught that Napoleon of the book trade napping. He showed good judgment in dropping out of bidding that was too heedlessly spirited; on the other hand he was courageous enough to stick to the bidding and buy at a seemingly enormous price rare books which could never elsewhere be procured. A large number of lots of early Pennsylvania statutes was offered at auction some years ago; rare laws of which no previous sale was recorded. He went to the auction instructed to buy, and he bought, though the price of lot after lot went into the hundreds. The responsibility and strain were so great that he did not get a moment's sleep that night; but the library has seen continued cause for congratulation, as the two or three statutes out of the entire number which have since been discovered and sold have realized prices far higher than those he paid.

A few days with Mr. Arnold on one of his trips abroad will throw light on his exhaustive methods in buying. The first day he spends with one of the large booksellers, discussing the needs of the library, its desire for colonial decisions and statutes, its interest in old books and editions, its ambition to be a really great library

in every department. He stirs up real enthusiasm in an English dealer, quite contrary to the traditions of the trade. The next day is spent at an auction sale; and as Mr. Arnold has been warned that the regular dealers will "knock out" an outsider, he arranges a code of signals with the auctioneer and astonishes the ring by getting the books he wants at a fair price. For the next day or two he visits the London second-hand shops. He "swaps" book stories with old Richard Amer until that aged miser of his stock looks up and offers at a reasonable price a few score early books that are badly needed. He sits smoking and drinking tea with John Salkeld in his little office among the books, while the dealer's hens and chickens disport in the bit of back yard outside. He finds law books by the dozen where indolent booksellers declare there are none, and he gets many a rare Pynson and Redman for the price of a ten-year-old directory. Then he runs across to Dublin to call on that eccentric Celt, Michael Hickey. Hickey has an old tumble-down house filled from garret to cellar with dusty books, he will sell anything, but has no idea what he has. So for Mr. Arnold it is off coat and turn over the whole filthy stock. As fast as he finds books he needs, Hickey throws them into piles: penny books, sixpence, shilling, half-crown. At length Mr. Arnold finds a prize: the "Registrum Brevium," first edition, 1531, for which he had long been looking. It will not do to ask Hickey's price for such a book by itself, so he takes along three or four other books with it, and on the sixpence pile they all go.

After Mr. Arnold's return Professor Thayer pounced on this book: "By George, Arnold, where did you get this? It was almost worth going across the water for this book alone." He went on to say that he had written to Professor Maitland to inquire why he had not cited the 1531 edition in his "Pleas of the Crown for the County of Gloucester," and Maitland had replied that he was unable to find the edition in any library to which he had access, and he was therefore obliged to cite the second edition. The discovery of such nuggets lightened the tedium of this laborious trip.

Mr. Arnold always laid stress upon the condition of the books he bought: not wide margins and uncut copies, the collector's concern, but texture of paper and strength of binding. For many years he would not buy American reports except in the first edition; for second editions and reprints were usually printed on poor paper. "The date of copyright and of imprint must

correspond" was his shibboleth. As a result of his care in this respect, and in securing proper leather and sewing when books were to be bound, the general condition of the books is now remarkably good.

Mr. Arnold's knowledge of the contents of the library was often amazing. Almost every day he had second-hand catalogues to examine; and even after the library contained 100,000 volumes he was seldom mistaken in marking a book as already in or not in the library. It was not uncommon, when the cataloguing department made a preliminary report that a certain book was not in the library, for Mr. Arnold to insist that it would be found on further search; and he was always right.

A large share of Mr. Arnold's success was due to his foresight in collecting classes of law books, before other libraries had realized the need for them. On one of his first journeys abroad he picked up a set of the session laws of New Zealand. A member of the Faculty who saw it on its arrival said that he wouldn't give it shelf-room. Yet it was the beginning of a remarkable collection of British colonial legislation, in the collecting of which the Law School Library was the pioneer. His was the first library to collect the decisions of European countries, and now has such a collection as probably can never be equalled. But it is the collection of editions of early English books in which his foresight was perhaps most characteristically shown. At a time when the Inns of Court were disposing of their older editions to get shelf-room, and booksellers priced only the latest edition, he set out to get together all the editions of Blackstone's Commentaries and other important old treatises; then of the quarto Year Books; and finally of all the old English texts. To-day such books are eagerly sought by libraries.

Of Mr. Arnold's enthusiasm in the service of the library, of the untiring devotion with which he has collected books for it, one cannot adequately speak. The library has been his life. In its service he has bought, cared for, and protected books for forty years. The admiration of the former students of the School was shown when the Law School Association, at its annual meeting in June, 1913, voted unanimously and with enthusiasm to present his portrait to the School he served so long and faithfully.

ASHMUN, JOHN HOOKER, was born at Blandford, Massachusetts, July 3, 1800, the son of Eli P. Ashmun, a leading lawyer and United States Senator. Ashmun entered Williams College at a

Dear Sir

This accompanying vol is I think, the one you mentioned. The set to which it belongs is Judge Story, — It was ordered by him from Italy in 1812 was captured on its passage by the British frigate Guerriere & recaptured by Com Hull — When you have made use of it, you may if you please send it directed to me, to Mr J. Codmans next door to your house Howard. Theat

Yours resp'y

J H Ashmun

Tuesday
Morn

LETTER FROM JOHN HOOKER ASHMUN

Preserved in a book of clippings about Judge Story, which was presented to the School by Simon Greenleaf

very early age, but after passing some time there entered the Junior class at Harvard, graduating in 1818. He studied law and practised in Northampton. Though laboring under the handicaps of poor health, slight deafness, and a feeble voice, he speedily attained great professional success. Judge Story was informed "that in the three interior counties of the state, to which his practice extended, he was, during the last years of his professional residence, engaged on one side of every important cause." Ashmun's remark that "A young lawyer like a contingent remainder must be supported by a particular estate," did not apply to himself. When he gave up practice at the age of twenty-nine, he stood in his own section of the state "in the very first rank of his profession, without any acknowledged superior."

His conception of success in practice may be inferred from his reply when Benjamin R. Curtis asked him if so and so were a good lawyer, —"No, he has always had too much business to be a good lawyer," a remark that comes home with bitter force to the young law school graduate who had hoped to keep up his study of legal principles, and instead finds himself working nights over wills and reorganizations.

While still actively engaged in practice, Ashmun devoted much time to giving instruction in the Law School at Northampton, established in 1823 by Judge Samuel Howe and United States Senator Elijah H. Mills. He taught there from 1827 until his appointment at Harvard in 1829. During the last year, because of Howe's death and Mills' bad health, the principal instruction in the School devolved almost entirely upon him.

On July 11, 1829, before his twenty-ninth birthday, Ashmun received the honor of selection by the Harvard Corporation as Royall Professor and colleague of Judge Story in the reorganized Law School. From his entrance upon his duties the following September until his death four years later, he did much more than half the work. Story knew when he accepted the Dane Professorship that he must frequently be absent on account of judicial duties, and had made it a condition that another professor should be appointed, who should take upon himself the detailed superintendence of the School and the "drill duty" and constant attention to the students. During the whole of each winter term the Judge was absent in Washington, and in 1831 Ashmun had almost the entire charge of the School even when the Dane Professor was in Cambridge, for his book on Bailments, published early in 1832, took most of Story's time.

Ashmun taught by recitations rather than lectures, but both the views of the textbooks and the answers of his class were subjected by the Royall Professor to close scrutiny and severe criticism. The interest of the students was aroused by the Socratic method before the final result was stated. Ashmun's system would seem not entirely unlike that pursued, many years later, by Ames and Keener with classes studying selected cases. Ashmun did not profess to be omniscient. When in doubt as to the right answer to a question from the class, he would reply, "I am not lawyer enough to answer that."

Charles Sumner, a pupil warmly devoted to both Story and Ashmun, thus compares them:

"Their manner of teaching was different, and that of each peculiar. Judge Story was always ready and profuse in his instructions, anxiously seeking out all the difficulties which perplexed the student and anticipating his wants, leaving no stone unturned by which the rugged paths of the law might be made smoother and the steep ascents be more easily passed. Professor Ashmun, with the same elevated object in view, left the student more to himself, throwing out hints which might excite his attention, cheering as the glimpses of a distant light to a benighted traveller, but which nevertheless did not supersede labor on his part. Whoever would prepare himself to make an inquiry of Professor Ashmun must already have applied his mind so strongly to the subject-matter as to have obtained a good conception of it; in short, he must have understood where the difficulty was."

Ashmun sometimes took Story to task for his rambling lectures, nor was the criticism always kindly received. Story once remarked, somewhat testily, "Now, Ashmun, don't you contradict what I say. I believe you would try to correct me if I told you that 2 and 2 make 4." "Of course I should," retorted Ashmun instantly, "they make 22."

The highest praise of Ashmun the teacher came from Story in the University Chapel at Ashmun's funeral:

"His method of instruction was searching and exact. It disciplined, while it awakened the mind. It compelled the pupil to exert his own powers; but it brought with it the conscious rewards of the labor. His explanations were always clear and forcible and satisfactory. . . . There is not, and there cannot be, a higher tribute to his memory than this, that, while his scrutiny was severely close, he was most cordially beloved by all his pupils; He lived with them upon terms of the most familiar intimacy,

and he has sometimes with a delightful modesty and elegance said to me, 'I am but the oldest Boy upon the form.' "

This is the keynote of Harvard Law School, which sounded eighty years later in the farewell letter of John Chipman Gray, "We were fellow-students trying to get to the bottom of a difficult subject."

It was Ashmun, together with Story, who first made Harvard Law School what it is. The unmistakable method stands out from Story's description of his short-lived colleague.

"He always studied brevity and significance of expression. And hence his remarks were peculiarly sententious, terse, and pithy; and sometimes quite epigrammatic. . . . Few persons have left upon the minds of those who have heard Ashmun so many striking thoughts, uttered with so much proverbial point and such winning simplicity. . . . He possessed in a remarkable degree the faculty of analyzing a complicated case with its elements, and of throwing out at once all its accidental and unimportant ingredients. . . . He rarely amplified by illustration; but poured at once on the points of his cause a steady and luminous stream of argument. In short, the prevailing character of his mind was judgment, arranging all its materials in a lucid order, moulding them with a masterly power, and closing the results with an impregnable array of logic."

Ashmun died April 1, 1833. Although long a sufferer from tubercular disease, he had taught day in and day out until a short time before. While he knew that his life would be very brief, yet death came unexpectedly. Only one friend was with him, Charles Sumner, who had undertaken to watch through the night.

No portrait remains of Ashmun, and the death mask which once existed has long disappeared. Two of his legal manuscripts were posthumously reprinted under Sumner's supervision in the *American Jurist*, and some of his lecture-notes are preserved in the Law School Library. Largely by the efforts of Sumner and James C. Alvord, a monument to Ashmun was erected in Mount Auburn Cemetery, but his best monument is found in the careers of his pupils and in Harvard Law School. More than half a century after his death, at the Law School Celebration of 1886, Judge Hoar recalled to memory this earliest great teacher of the School:

"I had the pleasure of some acquaintance with that model teacher, whose light went out too early for this institution and for

the society around him, John Hooker Ashmun, whose epitaph at Mount Auburn contains that summary of the character of a great lawyer: 'He had the beauty of accuracy in his understanding, and the beauty of uprightness in his character.'"

BAKER, HARVEY HUMPHREY, A.B. 1891, LL.B. 1894, taught Partnership at the School as Instructor in Law, 1896–97. In July, 1906, he was appointed Justice of the Boston Juvenile Court, where he showed great wisdom in his treatment of young offenders, and became a leader in the development of children's courts throughout the country. He was cut off from this service at the age of forty-six, on April 10, 1915.[1]

BALLANTINE, ARTHUR ATWOOD, A.B. 1904, LL.B. 1907, was Instructor in Criminal Law, 1907–09. He has been practising law in Boston, but is at present Solicitor of Internal Revenue in Washington.

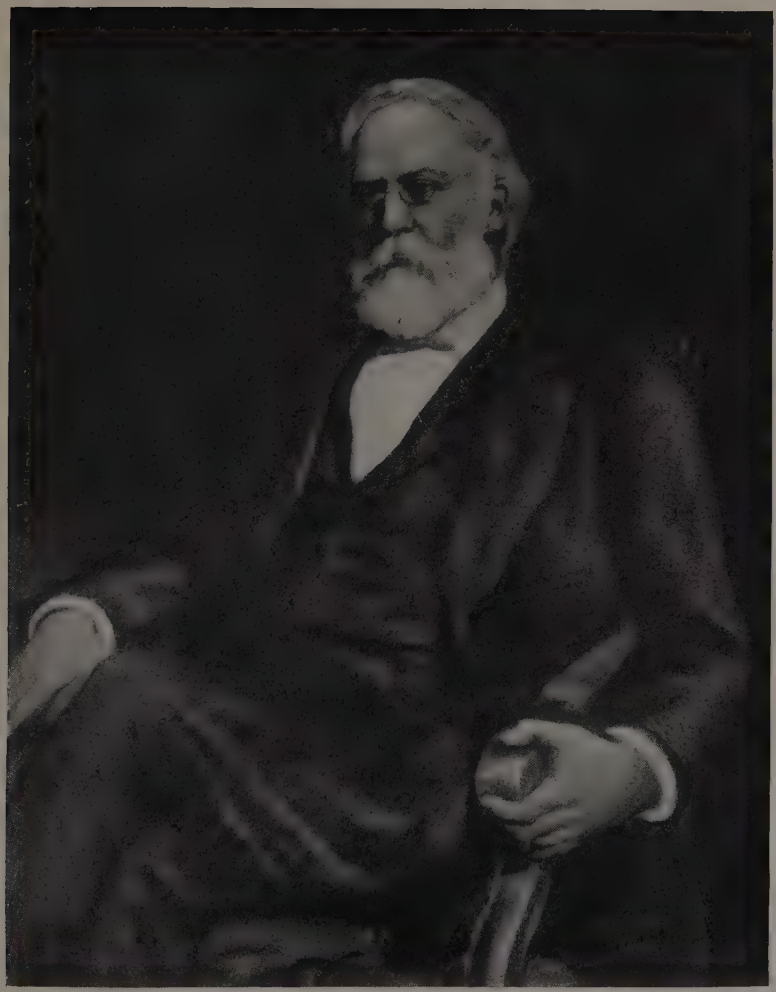
BANNISTER, LUCIUS WARD, A.B. (Leland Stanford Jr. University), 1893; LL.B. (Harvard) 1896, has practised law in Denver since graduation. Beginning in 1913 he has lectured at Harvard Law School in alternate years upon Water Rights. He has also taught the same subject at Cornell and the University of Denver.

BARNES, CHARLES BENJAMIN, A.B. 1890, LL.B. 1893, was Instructor in Suretyship, 1897–98. He is now practising law in Boston.

BARNES, CHARLES MAYNARD, A.B. 1877, LL.B. 1880, was Instructor in Sales, 1882–83, during Professor Thayer's absence in Europe. He practised law in Boston until his death, March 8, 1893.

BENNETT, EDMUND HATCH, graduated from The University of Vermont in 1843 and studied at Harvard Law School in 1851. He practised in Taunton, Massachusetts, and was Judge of the Probate Court for the County of Bristol. Early in 1870 he was appointed a Lecturer at the School, where he remained for a year and a half, teaching Criminal Law and Wills. Langdell had just been appointed Dean, and there was much discussion of methods of study. Judge Bennett prepared a General Syllabus of Law Studies, an excellent outline of the best textbooks, which survives as a valuable formulation of the system which was about to disappear from Harvard Law School. When the Boston University

[1] See an estimate of his work in 81 Cent. L. J. 82; 6 J. Crim. L. & Crim. 294. (1915.)



CHARLES SMITH BRADLEY

(From a portrait by Sir Hubert von Herkomer.)

Law School was founded in 1872 as a protest against the Langdell system of instruction, Judge Bennett joined its Faculty, became Dean in 1877, and spent the rest of his life in its service. He died in Boston, January 2, 1898. Several textbooks were edited by him, and he wrote a large number of legal articles.

BIGELOW, HARRY AUGUSTUS, A.B. 1896, LL.B. 1899, was Instructor in Criminal Law, 1899–1900, and then began practice in Honolulu. Since 1904 he has been a member of the Law Faculty of the University of Chicago.

BRADLEY, CHARLES SMITH, was born in Newburyport, Massachusetts, July 19, 1819, prepared for college at the Boston Latin School, and graduated from Brown University in 1838 with the highest honors in his class. He remained at college as a tutor for two years and then studied at Harvard Law School, 1840–41. He was admitted to the Rhode Island Bar and became the partner of Charles F. Tillinghast of Providence.

Rhode Island was at that time the chief manufacturing state in the country. It possessed an exceptionally able bar and bench. The state was active politically as well as commercially. Bradley came there on the eve of the Dorr War, which began the struggle not yet concluded to substitute a modern government for the charter given the Colony by Charles II. Bradley soon became prominent in the Democratic party, which favored reform, moving his residence from Providence to North Providence in order to live in a Democratic town. In 1854 he was elected to the State Senate and was instrumental in securing amnesty for participants in the Dorr Rebellion. He was delegate to several Democratic National Conventions, including that of 1860, where he supported Douglas. His practice was large. He was one of the counsel in Taylor *v.* Place,[1] which decided that the Rhode Island legislature had been deprived by the Constitution of 1842 of any power to grant new trials. He was a prominent figure in the Credit Mobilier litigation,[2] and was one of the losing counsel in Nichols *v.* Eaton.[3] In

[1] 4 R. I. 324 (1856). The counsel associated with Bradley was, however, the first to perceive the constitutional importance of the case.

[2] See Griswold *v.* Hazard, 141 U.S. 259 (1891); Ames, cases on Equity Jurisdiction, Vol. II, 259.

[3] 91 U.S. 716 (1875). The Eaton will was drawn by Markland, an English lawyer of much ability, who settled in Rhode Island and introduced spendthrift trusts into the United States.

February, 1866, Bradley was elected Chief Justice by a legislature in which his political opponents had a large majority.[1] He left the bench after two years' service because by temperament he could not bear to be tied down to anything, and indeed was an advocate rather than a judge.

On January 14, 1870, Bradley was appointed Lecturer at Harvard Law School for the rest of the academic year and was reappointed for three succeeding years. On June 28, 1876, he became Bussey Professor in place of Washburn, and served three years. Among the courses which he taught were Equity, Corporations, and Partnership. Bradley was hardly a legal scholar, and indeed the notes for his lectures were frequently jotted down on the backs of envelopes during his train journey from Providence the same morning. However, he was a good law teacher of the old type. He brought to the School a ripened legal judgment, derived from a long, varied, and successful practice at the bar and a short service on the bench. He had been a brilliant jury lawyer, a persuasive advocate before the higher Courts, and an adviser in important affairs of business and of state. He knew the law — not only as read in the books — but as applied in the lives of men. And he had for it a deep respect which he imparted to the student in the grand manner.

Judge Bradley had been a pupil of Story and Greenleaf; and he lectured in a fashion recalling the old days. He was wholly untouched by the case system; and he was the last Harvard instructor of whom this could be said. Each of his lectures resembled a chapter in a text-book — a text-book of uncommon accuracy and elegance. Even to many enthusiastic believers in Langdell it was clear that there was a high place for Judge Bradley. Each of his lectures contained a statement of general doctrine, examples of the application of the doctrine, a statement of real or apparent exceptions, examples of those exceptions, and ample citations of decisions. Judge Bradley, though now and then asking questions, did not encourage interference with his orderly presentation of a subject. It was not uncommon for some bright young man to interrupt the statement of general doctrine with a suggestion of an exceptional case; and on one such occasion Judge Bradley, with the courtly manner which so well matched his mode of thought and of expression, said: "Your mind is more active than mine; I

[1] A manuscript letter in possession of a member of the Faculty gives an interesting account of his election.

should have reached that point in about ten minutes." There was, indeed, a hand of steel within the velvet glove.

To a prospective practitioner, Judge Bradley's lectures were useful samples of the sort of exposition valued in courts; and though the Langdell system of study was more exacting and thorough, it was well for the Law School that the new system should compete not with unskilled presentations of the old system but with the old system at its best.

The Langdell supporters, such as Ames, went to hear Bradley, supplementing his Equity lectures by private study of White and Tudor's Cases on Equity. One of these men, Francis Rawle, has recently written: "No one who was in the School in the seventies can fail to look back with gratitude and admiration to Chief Justice Bradley. Phrases of his remain in one's memory to this day — and his gracious manner was to his students the 'Gentlemen and Fellow-students of James Russell Lowell.'"

Bradley resigned in 1879 and returned to practice. In his later years he was prominent in public matters in Providence, particularly in opposing the railroad right of way which now runs through the centre of the city and was described by him as a Chinese wall cutting off his portion of the city from the business section. He wrote several articles in favor of a thoroughgoing revision of the Rhode Island Constitution by a convention. An advisory opinion of the Supreme Court that such a convention could never be held called forth more articles which were gathered into a book, with an appendix by his cousin, James Bradley Thayer.

Bradley was a born orator and was frequently called upon for addresses. Perhaps his best speech was in favor of the preservation of the Old South Church in Boston. He was a delightful companion, who would talk well on everything except the weather, which he excluded on principle from his conversation. He had read widely and had seen much both of this country and Europe, where he purchased a large number of paintings and an excellent collection of engravings and prints. He was also fond of farming. He liked to get up on hills and buy land. In course of time he acquired three farms, two of them with magnificent views, and these farms he stocked with fine cattle and with sheep, then unusual in New England.

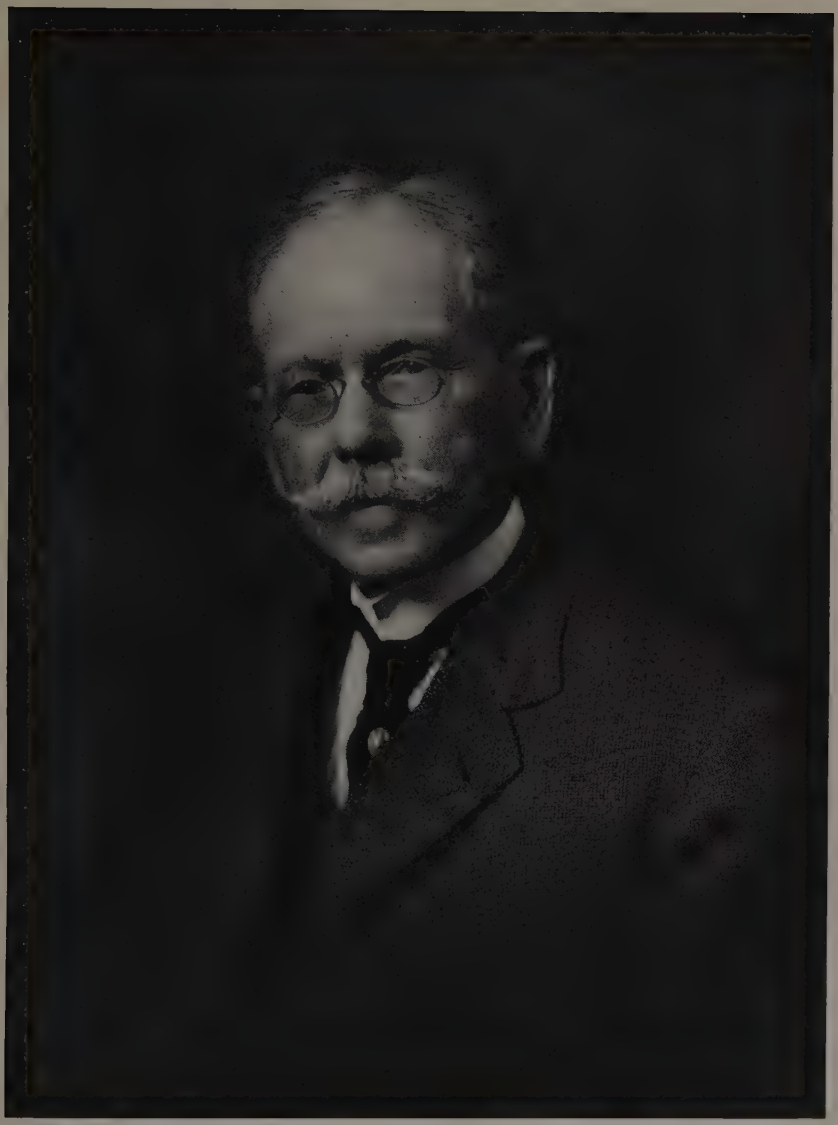
The last episode of Bradley's varied life was a contested Congressional election, which exhausted his energies and brought

about his death on April 29, 1888, almost alone, in a New York hotel away from his family and friends.

BRANDEIS, LOUIS DEMBITZ, LL.B. 1877, A.M. 1891, studied at the School until 1878. It is said that he received the highest average mark ever given a student in Harvard Law School. He was admitted to the bar at Louisville, Ky., in 1878, began to practice at St. Louis, Mo., in November, 1878, and removed to Boston in July 1879. In 1882, during Professor Thayer's absence in Europe, he was appointed Instructor in Evidence. In 1892–1896 he lectured on business-law at the Massachusetts Institute of Technology. His influence on recent development of the law has been very great; for instance, the recognition of the right of privacy and the need of testing the validity of labor legislation in the light of scientific data. He took a leading part in the formation of the Harvard Law School Association, served for several years on the Committee of the Overseers to visit the Law School, and has long been a Trustee of the *Harvard Law Review*. In 1916 he was appointed to the Supreme Court of the United States.

BRANNAN, JOSEPH DODDRIDGE, was born at Circleville, Ohio, January 6, 1848. After graduating from Harvard College in 1869 he studied for a year in Munich, and then entered the Law School. After taking the degrees of A.M. and LL.B. in 1872, he remained at the Law School for an additional year of study. During his law course, he was Tutor at Harvard College in German and Roman Law. He practised law in Cincinnati from 1873 to 1898, and during the last two years of his practice was Professor of Law in the Law School of the University of Cincinnati, from its foundation in 1896. On June 15, 1898, he was appointed Professor of Law at Harvard Law School and in 1908 became Bussey Professor. His courses were Bills and Notes, Partnership, and Damages. His chief publication has been an annotated edition of the Negotiable Instruments Law. In June, 1917, he retired from teaching, but not from writing, and retains his office in the School.

Mr. Brannan introduced to the Law School the so-called "self-teaching case-book," which has interleaved pages for lecture notes and illustrative citations. This was soon adopted by several of his colleagues. The authorities thus collected by Mr. Brannan have been of very great value to his successors.



J. D. Brannan.

BREWSTER, FRANK, A.B. 1879, LL.B. 1883, a member of the Boston Bar, served as Instructor in the Peculiarities of Massachusetts Law and Practice from 1890 to 1896.

BYRNE, JAMES, A.B. 1877, LL.B. 1882, was Lecturer on the New York Code, 1892–93. He has long been a leading member of the New York Bar. He is one of the Committee of Overseers to visit the Law School. In June, 1917, he founded the Byrne Professorship of Administrative Law.

CARTER, JAMES COOLIDGE, was born at Lancaster, Massachusetts, October 14, 1827. He graduated at Harvard College in 1850, and at the Law School in 1853. He took high rank in college, both intellectually and socially; and after leaving the Law School entered practice in New York in the office of William Kent, formerly Royall Professor of Law. He was at once successful, and soon reached the highest point of professional standing. For many years before his death he was the acknowledged leader of the American bar. He joined with Tilden in defeating the Tweed régime in New York City, and was counsel for the city in the litigation against Tweed. He was counsel in most of the great constitutional questions during the last quarter of the nineteenth century, and especially in the Transportation and Income Tax Cases.

Carter was the great opponent of the project for a Civil Code, and by his writings and speeches secured its defeat. He served on state commissions to draft an article of the constitution for the government of cities, and to frame a judicial system for the state. He was one of the counsel for the United States in the Fur Seal Arbitration.

Carter was an enthusiastic Harvard man, serving as Overseer and as President of the Alumni. He was especially loyal to the Law School; he served as the first president of the Law School Association, and made a notable address at its first meeting. He accepted an appointment to lecture, and had his material ready at the time of his death; the lectures were published under the title, "The Origin, Growth, and Function of Law." In his will he founded in the Law School the Professorship of General Jurisprudence, and his gift is the largest single benefaction ever made to the School. He died in New York, February 14, 1905, and, in the words of his friend Joseph H. Choate, left room for a thousand.

CAMPBELL, ALLAN REUBEN, A.B. 1899; LL.B. 1902, entered practice in New York upon graduation from the School. He has been Lecturer on New York Practice in alternate years since 1906-07. He has also served the School by starting an organization to help Harvard Law Graduates obtain employment in New York law offices.

CHAPLIN, HEMAN WHITE, A.B. 1867, was born in Providence, Rhode Island, 1847. He began practice in Boston in 1869, was assistant district attorney 1875–77, and a member of the Prison Commission in 1887. The next year, 1888, he became Lecturer on Criminal Law at the School and remained for three years. He now resides in Washington. Besides legal writings he has published "Five Hundred Dollars and Other Stories."

CONANT, ERNEST LEE, A.B. 1884; LL.B. 1889, entered practice in New York. In 1893–94, while he was Instructor in Common Law in Harvard College, he was asked to give the lectures at the Law School on the New York Code in place of Mr. Byrne, who was prevented from lecturing that year by press of business. In 1889 Mr. Conant went to Cuba and there opened an office in connection with his New York practice, which he is still continuing.

CURTIS, BENJAMIN ROBBINS, was born at Watertown, Massachusetts, November 4, 1809. He was graduated from Harvard College in 1829, and from the Law School in 1832, and after a short trial of a country bar, entered practice in Boston in 1834. He at once took a high position at the bar, and for seventeen years enjoyed a large and varied practice. He became known for his careful, patient, exact study, and for his power of clear statement and exposition. At the age of thirty-six he was elected to the Corporation of Harvard College. As a Webster Whig he took the conservative side on the constitutional questions then raging. He drew the Massachusetts Practice Act, thus giving to his native state the simple practice under which, without important change, the courts are still acting. In 1851 he was appointed by President Fillmore to the bench of the Supreme Court. As a judge he at once took a high place, by reason of the clearness, force, and lawyerlike quality of his opinions; and he wrote many strong opinions both on circuit and in the Supreme Court. None, however, was more important or famous than his dissenting opinion in the Dred Scott case. Soon after the decision in that case he

resigned from the bench, at the age of forty-eight, and returned to the bar, where he was very successful. He was one of the counsel for President Johnson in his impeachment trial. In 1872–73 he delivered a course of lectures in the Law School on the Jurisdiction and Practice of the Federal Courts, afterwards published. He died on September 15, 1874.

CURTIS, GEORGE TICKNOR, brother of the above, A.B. Harvard College 1832, studied at the School during the year 1833–34. On November 27, 1847, he was appointed lecturer for the remainder of the first half of the current academic year, until Judge Parker could come to the School. He practised in New York City, and died there in 1894. He wrote many legal textbooks and articles.

CUSHING, LUTHER STEARNS, LL.B. 1826, nephew of Asahel Stearns (*q.v.*), was born in 1803. From 1832 to 1835 he was Clerk of the Massachusetts House of Representatives. In 1844 he was appointed to the Court of Common Pleas and became in 1848 reporter of the Massachusetts Supreme Court. He is best known for his "Manual of Parliamentary Practice," which has gone into numerous editions. He also translated several books on the Civil Law. In 1848 he was appointed Lecturer and served for three years, teaching Civil Law, Parliamentary Law, Criminal Law, Arbitrations and Real Property. The Corporation, which had refused to advance him from a lectureship in 1850, despite Parsons' recommendation, asked him in 1851 to be University Professor, but he was forced by ill health to give up the School altogether. He died in Boston, June 22, 1856.

DANA, RICHARD HENRY, was born in Cambridge, Massachusetts, in 1815. He graduated at Harvard College, 1837, and took his degree in law at the Law School in 1839, though he stayed at the School until 1840. At the Law School he distinguished himself in his moot court arguments. He went to sea for a time, a result of his experiences being his well-known book, "Two Years Before the Mast." He practised law in Boston, devoting himself largely to cases in admiralty and international law. His edition of Wheaton's "International Law," though most unfortunately suppressed on a charge of infringing the copyright of a former editor, remains the most lawyer-like book on the subject ever written, at least by an English or American lawyer. He was an aggressive radical, an extreme anti-slavery man, and was nominated by President Grant as Minister to England, but

failed of confirmation. From 1866 to 1868 he was lecturer on International Law at the Harvard Law School. He died in Rome, 1882.

DAVIS, BANCROFT GHERARDI, A.B. 1885; A.M. and LL.B. 1888, a member of the Boston Bar, taught Mining and Irrigation in 1910 and has been Lecturer on Mining Law in alternate years since 1913–14.

DEXTER, FRANKLIN, A.B. 1812, was born in 1793. He was a leader of the Boston Bar and United States District Attorney. During the year 1848–49 he lectured at the School on Constitutional and International Law, the Jurisprudence of the United States, and Patents. He died at Beverly, Massachusetts, in 1857.

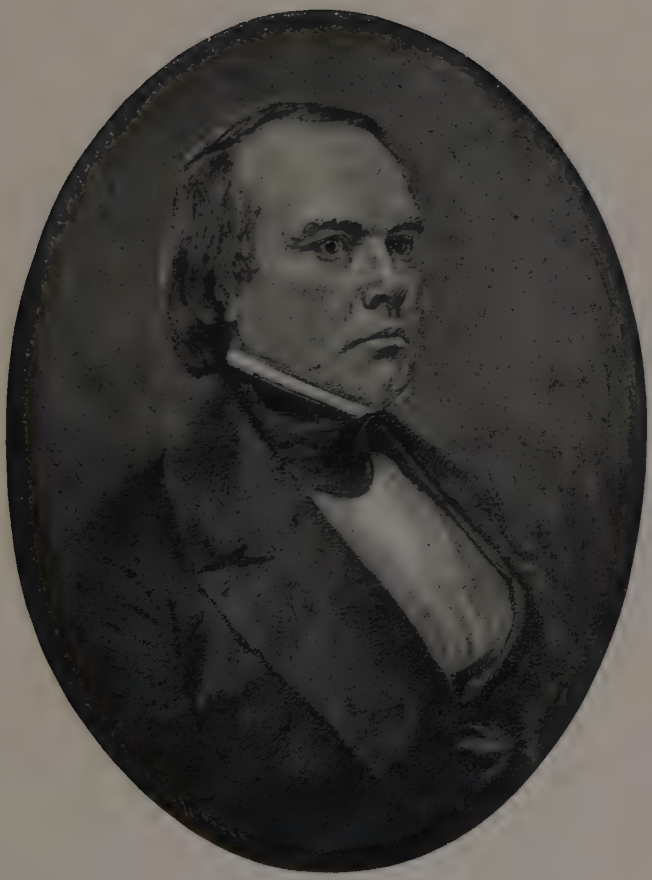
DICEY, ALBERT VENN, born in 1835, was at Balliol College, Oxford, and is now a Fellow of All Souls. From 1882 to 1909 he was Vinerian Professor of English Law at Oxford University, occupying the chair which was first held by Blackstone. Among his books are "The Law of the Constitution" and "A Treatise on the Conflict of Laws." In 1898 he was appointed Lecturer on Changes in the English Law during the Nineteenth Century. The lectures which he delivered at the School were afterwards published as "Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century." A new edition was issued in 1914, with a remarkable preface commenting on the changes in English legal thought during the twentieth century.

DODGE, ROBERT GRAY, A.B. 1893, LL.B. 1897, taught Property II, 1898–99, and assisted Professor Williston as Instructor in Contracts, 1900–01. He is practising law in Boston.

DONHAM, WALLACE BRETT, A.B. 1898; LL.B. 1901, a member of the Boston Bar, was Lecturer on Equity, 1903–04. He is now Vice President of the Old Colony Trust Company, Boston.

DUTCH, CHARLES FREDERICK, A.B. 1901; LL.B. 1905, of the Boston Bar, has been of great service to the School in teaching a large number of courses during the years 1906 to 1916. He taught Admiralty ten times, Equity III four times, and Property III twice.

FESSENDEN, FRANKLIN GOODRIDGE, LL.B. 1872, remained at the Law School for a year of graduate instruction, and at the



BENJAMIN ROBBINS CURTIS, LL.B. 1832
Associate Justice of the United States Supreme Court, 1851–1858

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same time taught French in the College. In 1882–83 he returned as Instructor in Criminal Law. He practised in Greenfield, Massachusetts, until he was appointed to the Superior Court in 1891. He was instrumental in securing reformed pleading and practice in the criminal law of the Commonwealth.

FISH, FREDERICK PERRY, A.B. 1885, studied at the Law School for a year. He has long been head of one of the leading Patent Law firms in the United States, with offices in New York and Boston. From 1901 to 1907 he was President of the American Bell Telephone Company and the American Telephone and Telegraph Company. When the course in Patent Law was offered at the Law School for the first time, in 1891–92, Mr. Fish was appointed Lecturer and taught the subject for three years.

FOLLEN, CHARLES, Professor of German in Harvard College, conducted a series of recitations at the Law School in Cooper's Justinian's Institutes, during the spring of 1834. This was the first course in Civil Law at the School. Follen perished in the burning of the steamboat Lexington on Long Island Sound in 1840.

FREUND, SANFORD HENRY EISNER, A.B. 1901; LL.B. 1903, remained at the School for a year of graduate work. He then entered practice in Boston and was for several years Instructor in Law at the Law School of Boston University. He was Instructor in Criminal Law at Harvard Law School for three years, from 1907 to 1910. He is now practising law in St. Paul, Minnesota.

GRAY, JOHN CHIPMAN, was born in Brighton, Massachusetts, July 14, 1839, the son of Horace and Sarah Russell (Gardner) Gray. His older half-brother was Justice Horace Gray of the United States Supreme Court. His grandfather, William Gray, was reputed the largest ship owner and wealthiest man of New England. John C. Gray prepared for college at the Boston Latin School, and was graduated from Harvard College in 1859 with high rank. He thereupon entered the Law School, from which he received a bachelor's degree in law in 1861. He remained in the School, however, for another year and received the degree of A.M. in 1862. Immediately thereafter he entered the army and served until the close of the war. He was Second Lieutenant in the Forty-first Massachusetts Infantry and the Third Massachusetts Cavalry, aide to General Gordon, and Major and Judge Advocate of United States Volunteers on the Staff of

General Foster and General Gillmore. He was one of the first officers to meet Sherman at Savannah after the march to the sea, and is referred to in Sherman's report of his operations as "a very intelligent officer whose name I have forgotten."

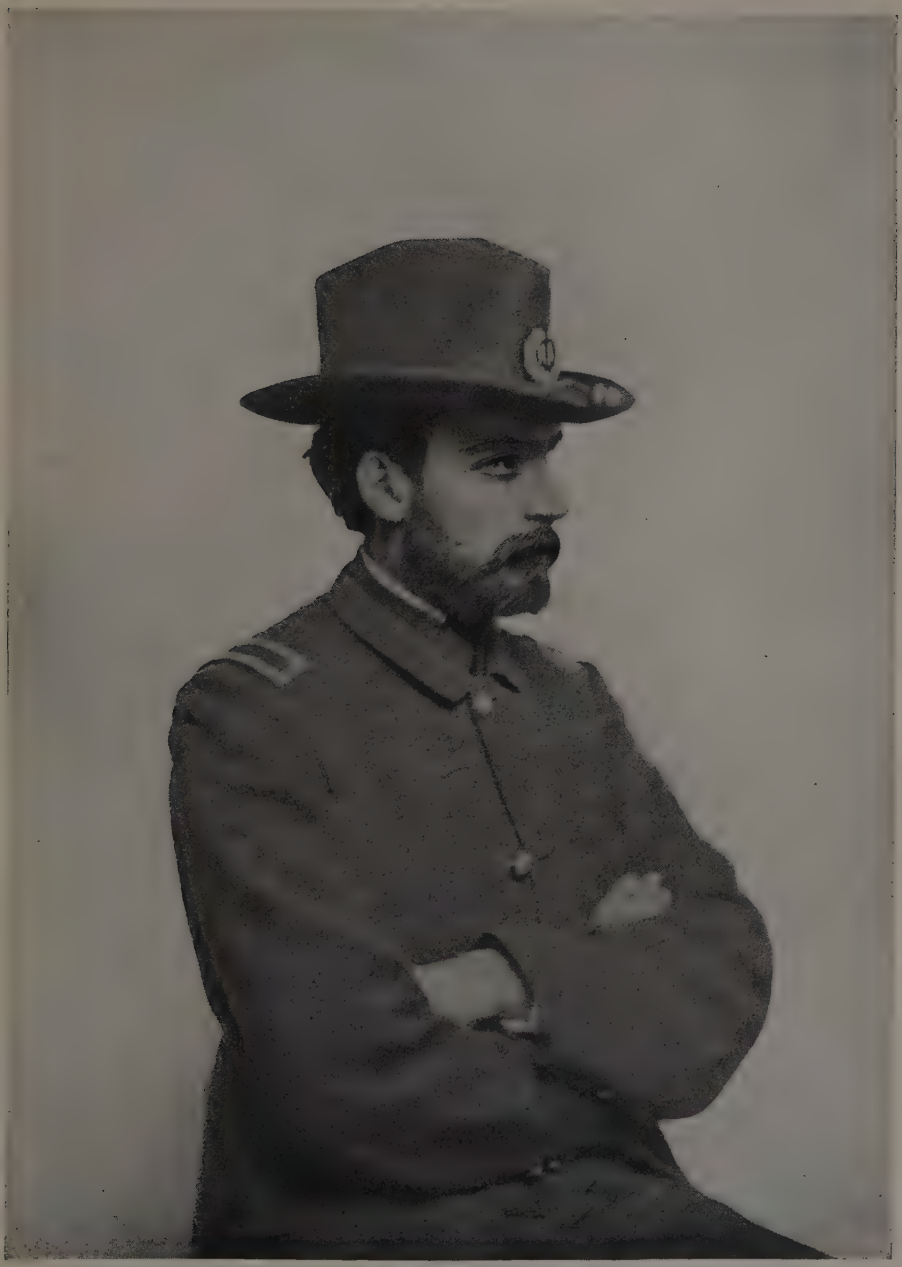
In after years Gray characteristically refrained from reminiscences of the War. One of his colleagues in the Law School tells how some of them, after many years' association with him, first learned that he was entitled to call himself Major, when a chance visitor addressed him by that title.

After the war Gray returned to Boston and entered on the practice of the law in partnership with his friend John C. Ropes. The firm thus begun continued until Ropes' death in 1899. William C. Loring later became a partner, and remained so until his accession to the bench in 1899. The firm name then was changed from Ropes, Gray and Loring to Ropes, Gray and Gorham, Robert S. Gorham and other of Gray's pupils becoming from time to time members of the partnership. Gray early acquired a reputation as a scholarly lawyer, and, jointly with Mr. Ropes, edited several of the early volumes of the *American Law Review*. He also did a large part of the work in the preparation of volumes 100 to 111 of the Massachusetts reports, owing to the temporary inability of the reporter of decisions to fulfil the duties of his office.

In 1869 he was first appointed lecturer in the Harvard Law School, and again appointed in 1871, 1872, and 1873. In 1875, he became the first Story Professor of Law, and in 1883 Royall Professor, which remained his title until his retirement from teaching, when he was appointed Royal Professor *Emeritus*. Thus he was both first and last of the great teachers who surrounded Langdell.

In the meantime he married, in 1873, Anna Lyman Mason, a granddaughter of Jeremiah Mason. She survives her husband. Their children are Roland Gray (*q.v.*), a member of his father's firm, and Mrs. Henry D. Tudor. During the greater part of the year he lived on Beacon Street, Boston, but for a short season in spring and autumn he was accustomed to occupy a fine old house in Cambridge, which came to him from his uncle.[1]

[1] In recent years this house was known to the law students as "Blackacre," but the men who were in the School in the '90's will always remember the place as "Pinkacre," the name given to it by Gordon Bell of the Class of 1896. Aside from its humor, this name was peculiarly appropriate during the spring and summer, when the gardens were in full bloom.



JOHN CHIPMAN GRAY IN SECOND LIEUTENANT'S UNIFORM

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For nearly forty years from his first appointment as Professor, Gray continued to teach in Cambridge and to practise law in Boston. His remarkable constitution and smoothly working mind enabled him to pursue a variety of activities of which few men are capable. His work in Cambridge was that of a scholar and a student. It was always his primary interest, and his mastery of the law of property, to which he chiefly devoted himself, was recognized not only throughout the United States, but in England. Nevertheless he was a trustee of large estates, and a partner in a large and busy office in Boston, of which he became head after the death of his partner Ropes. His reputation as a draftsman of wills and trusts and as an authority on the law of these subjects and of real property was of the highest. Testators and clergy accused of heresy, cotton mills and colleges, millionaires and poor widows in trouble, came to him for advice, and his opinion seldom proved wrong. In his latter days, at least, more than one court of supreme jurisdiction seemed to hang upon his words with the same sense of conviction as if it had been his class in Property.

Gray's plans for writing were stated in a letter to a friend not long before his death, with characteristic modesty and grace of phrase:

"Some fifty years ago I determined that I would do two things; first, write a book on the Rule against Perpetuities, which should be a model textbook; and secondly, write something on analytical jurisprudence; and I have had these objects in mind ever since. Of course, the cares of the world and the deceitfulness of riches and the lust of other things have choked the 'word,' but they have not entirely destroyed it. I may say that I have pursued at eve what I pursued at morn."

His idea of a "model textbook" may be gathered from the preface to the "Rule against Perpetuities":

"Such a book should deal with the whole of its subject, its history, its relation to other parts of the law, its present condition, the general principles which have been evolved and the errors which have been eliminated in its development, and the defects which still mar its logical symmetry, or, what is of vastly greater moment, lessen its value as a guide to conduct."

He was the master of a singularly felicitous style both in speaking and writing. There was no trace of effort or straining for effect. Whatever he wrote is easy to read, and as easy to understand as the nature of the subjects with which he dealt admits;

yet it has the coherence and logical sequence which most men cannot achieve even with the labor of the file. Moreover, a keen sense of humor and an occasional allusion from the full storehouse of his mind often added charm to what he wrote or what he said.

His "Nature and Sources of the Law" is probably the best book on Jurisprudence in English. It is certainly the wittiest. The illustrations from the camp, the field, or the dinner table which light up its pages happily distinguish it from other writings of its kind. The same felicity marks Gray's discussion of the most technical points of Property Law. He could quote Lucretius in connection with Claflin *v.* Claflin, and preface his Restraints on Alienation of Property with a passage which recently brought a letter to the *Law Review* from a California lawyer, who asked the name of a book he had seen ten or fifteen years before about *Nichols* v. *Eaton.* "I do not know who wrote the book, but am inclined to think it was some Harvard instructor. It starts out in one of its chapters, possibly the preface, with the statement that the author felt that his was the 'voice of calamity howling in the wilderness.'" [1]

Not content with these activities, Gray devoted much time in evenings and in vacations to miscellaneous studies. His extensive library was of deep interest to him, and he knew its contents. Exercises in the higher mathematics or studies in theology were to him a form of recreation. Nor was he merely a student; his company was prized at a dinner table or social gathering, and though the more vapid and trivial side of social diversion was distasteful to him, he valued good talk and was himself a good companion for those who shared his tastes.

He was intensely human and unbookish. A few years ago a *Law Review* man was dining at Mr. Gray's house and laboring to converse at what he thought the proper Beacon Street level about the Opera, Whistler, and Agadir. Suddenly Gray broke in, "Did you ever go to Revere Beach?" The guest, somewhat taken aback, stammered out something about enjoying the sea air and surf. "Ah," said Gray, "I like a ride on the roller-coaster, myself."

One contemporary enthusiasm he could not share, the love of highly organized sport. Law students bound for a Yale-Harvard game have been surprised to meet him walking away

[1] "Were it not for an occasional dissenting opinion, . . . I should be *vox clamantis in deserto.*" Gray, Restraints on Alienation (2d. ed.) iv.

from the Stadium. He never went in, he explained to one of his partners. "I am out here to see the crowd. I am interested in the expressions of the people." When the newspapers, mindful of the luckless outfielder who lost the World Series by a muffed fly, dubbed the Yale quarterback who dropped a punt at a critical moment, "the Snodgrass of football," Gray remarked, "I didn't quite understand that allusion to Dickens."

Even during Gray's lifetime legend had begun to surround him. His resplendent ties were the glory of the School. Traditional comments on his courses were cherished — that constitutional law is not law but politics, that evidence is the bastard of the law. At the close of a lecture in which Gray had been denouncing with his customary vigor a decision which upheld a spendthrift trust, always offensive to Gray's uncompromising sense of honesty, a student approached the desk and said: "Mr. Gray, perhaps you would be interested to know that I was the spendthrift in that case." Gray replied, "I am very sorry if I have said anything to hurt your feelings, but of course you will understand that I cannot change my opinion of the law of that decision." He would criticise a decision on Perpetuities severely, and then catch himself: "Perhaps I ought not to say that — the fact is, I lost that case." Once, having two lectures in succession in the same room, he became absorbed in questions at the end of the first hour while the new class filed in. Suddenly, he broke off, gathered up his books, and walked out of the room. On another memorable occasion, instead of conducting the usual discussion, he brought a manuscript tied with blue ribbon, and read a masterly essay on *Dumpor's Case*. Imagine the astonishment of the class next day when he produced the same manuscript again, but not a single student betrayed that there was anything wrong and the note taking went on as usual while he read the lecture through a second time. The most apocryphal story of all had it that in his younger days Gray was proctor of a dormitory, where midnight closing was strictly enforced. (The impossibility of the tale is shown by the fact that Gray never lived in a dormitory after he left college.) A student who had been out till one o'clock with a sick friend banged on the dormitory door, trusting in Gray's knowledge of his excuse. Soon he heard Gray shuffling down the steps in slippers, murmuring to himself as he came, "The weight of authority is that I should keep this man out. — But reason urges me to let him in." And then with his hand on the knob, "I think I will let the weight of authority prevail." His

footsteps died away up the stairs, leaving the luckless youth to seek lodging elsewhere.

In appearance Gray was tall and robust, suggesting perhaps rather a successful business man than a scholar. He was indeed a successful business man, and on any question of affairs his opinion was valuable and valued. This combination of scholarship with familiarity with affairs and common sense in all his conclusions was Gray's most remarkable intellectual distinction. "And none of his remarkable qualities and capacities," says Justice Holmes, "remained isolated or futile, but they all united to give character to the stream of his thought."

Such qualities as these were bound to tell in his teaching. The daily intimacy of the classroom, under a system which keeps the instructor under fire and exhibits him in action, leaves nothing unrevealed. Weakness of intellect or character becomes as evident as tricks of manner. By the same token contact with a fine legal mind seeking nothing but the truth was a legal education and something more. His scorn of pedantry, his freedom from the least touch of self-consciousness, brought moral as well as intellectual stimulus. He treated his pupils as fellow-students, working with him on an equal footing to get at the truth. By so doing he brought before them most effectively the vastness of the law, and he made this very thought, so apt to discourage a beginner, a source of inspiration; for as the student had long since learned that Gray could stoop to no pose, he was excited by the sense of really helping his master. He had other special gifts, too, to help him as a teacher. He understood men, — no doubt because of his own direct and manly nature. And he had a wonderfully swift and smoothly working mind. Among the teacher's pitfalls is the danger that after long reflection he can see the thing in only one way. His thought thus hardens into a rigid outline, and his very learning may increase his difficulty in dealing with a beginner who comes at the matter from an unexpected and unlawyer-like angle. The flexibility with which Gray met his questioner's mind, his interest in doing so, the ease and directness with which he followed out a new line of reasoning to a fruitful conclusion, make him a unique figure in the memory of thousands of grateful pupils.

His method of teaching was always thorough and interesting, but it was not always the same. He had been educated in the old days of the lecture system, and he began by following that system, with modifications of his own. Even after Langdell

and Ames had made the case system a success, Gray long continued his own method, not requiring students to state and discuss cases, but announcing a list of cases to be read as a preparation for each lecture, and then giving a lecture of artistic form, with beginning, middle, and end, but with occasional questioning. These lectures were models of exposition; and a peculiarly skilful passage was the introductory paragraph in which, beginning with the words "The last time," Gray summarized the results of the preceding lecture in such way as to give an appropriate introduction to the work of the day, but spoke so rapidly that his words could not be taken down as a substitute for the full lecture. It is a pity that those lectures and summaries have not been published; for even the most loyal believer in the case system would recognize their thoroughness and beauty.

Gray eventually became a convert to the case system at the time when Langdell's method was meeting with much opposition among practitioners. He was most valuable in convincing the bar of Boston that there must be something in the new fangled way of doing things or Gray would not have believed in it. The fact that a practical man, not only interested in scholarly things, not only interested in what the law had been or was going to be or ought to be, but also interested in what it was and now happened to be, — that such a man believed in methods of teaching and administration that were being adopted, counted for much.

Gray produced six volumes of cases which served for many years as the basis of his teaching and also as a large part of the foundation for work by others, so that treatises written before and after the appearance of Gray's Cases differ in ways which indicate clearly enough the influence and utility of his collections of authorities.

As he grew older he more and more avoided stereotyped methods and in later years used no lecture notes except brief annotations in the margin of his case-book. The substance was in his head, the form largely extemporaneous. His charm was found in his clearness, thoroughness, common-sense, homeliness and willingness to confess ignorance and to ponder upon novel suggestions. When he leaned back and slowly thought aloud, he gave a lesson in thoroughness and humility which may not have been the least valuable part of the mark left by him upon his pupils.

In one of his addresses to his old pupils, he spoke of his own attitude toward the teaching of law:

"I have never been able to share the feeling of those who regard the law as simple, who say that if you can only get hold of a few fundamental principles all is easy. Law is as complex as life. However often I may have been over a subject, I never go over it again without coming across questions, analogies, that I never saw before.

"Some of my colleagues in the College (none in the Law School, I have never heard such things there) are in the habit of lamenting that they have so much of the drudgery of teaching that they have no time for original research. They have never won much pity from me. They are like the English officer who said that the army would be a very good profession for a gentleman were it not for those damned soldiers. A teacher who has not allowed his wits to be dulled by routine will find plenty of matter for research in his daily work."

When not teaching, most of the professors withdrew into the library stacks, where students did not much venture. Gray, however, except in his later years, sat at a large table in an alcove opening out of the students' reading-room. This fact and his friendly and helpful ways made him much resorted to by the students. Even when the growth of the School made it necessary to put desks for students in this alcove, Gray for once obstinately stood up for his own way and, despite all that was said by the architect or the other professors, he would not move out. He had a little place railed off there for himself, and there he stayed with his students.

One Christmas vacation a young student from the West, who was detained at the Law School during vacation because of his distance from home, was seeking to get an introduction to the Roman Law, though it was not a part of the school curriculum. With this in mind, he was reading Mackenzie's book on the subject. Gray, passing by, caught a glimpse of the title, stopped and said simply, "Don't read that." The student replied, "What shall I read?" Gray inquired, "Do you read German?" and the student answering that he had some slight knowledge of the language, Gray went into the stack, secured a copy of Sohm's Institutes, which had then recently appeared in German and had not been translated, set it down before the student, saying, "Read that," and went about his work. Twenty years later Gray attended the course in Roman Law which this student, Roscoe Pound, was giving at the School.

Among all their memories of Gray the most grateful to his

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176 BEACON STREET

Feb. 1st 1913.

To the Class of 1913 in Property III.

I value greatly, my dear fellows, the beautiful bowl you have given me, and which I intend to keep in constant use; I value still more the letter which accompanies it.

Property III. has been a perpetual delight to me, never wearisome. I have always felt that on both sides it was not an attempt to show how much we knew, or how smart we were, but that we were fellow-students trying to get to

the bottom of a difficult subject.

I made up my mind some time ago that you would be my last class, and I determined that my swan song should be my best; I was much disappointed that it seemed wisest for me to stop now.

I want to bespeak your good will to my successor for the rest of the year. He is a better lawyer than I am.

With my best wishes for your success and happiness, I am

Yours most sincerely,

John Chipman Gray,

old students will be his affection for them. This was one of the great feelings of his life. His "Nature and Sources of the Law" was dedicated "to his Old Pupils, whose Affectionate Regard has been to him a Life-long Blessing, from their Grateful Master." Although he continued to practise while he taught (a thing made possible by what he described as his "very peculiar and very fortunate" relations with his partners, and his not less fortunate and peculiar mental gifts and methods of work), he always put the Law School first. More than once he thought of giving up practice, and like Ezra Thayer he declined a position on the Massachusetts Supreme Judicial Court for the sake of the School. In the last year of his life he said: "I cannot imagine any more delightful work than teaching intelligent young men things which you know and which they do not know but desire to know." The sign that told him it was time to give up teaching after more than forty years was that it was no longer a regret to reach the end of the teaching hour.

Early in the year 1913 he had a sharp illness, and on the first of February of that year he resigned his professorship. He therefore was serving his thirty-eighth year as a professor and had previously served four years as a lecturer. This record of over forty-one years' service as teacher in the School has never been equalled, and is not likely often to be repeated.

Several gifts were made to Gray by his students when he retired. One of these called forth the farewell letter to his last class reproduced opposite this page.

After his resignation Gray never regained his physical strength, though his mind remained clear and active till the end, February 25, 1915. He remarked that until he had passed the age of seventy he never saw any occasion to change the habits of life which he had formed at thirty; that he had been able to work as he liked, eat as he liked, smoke as he liked and go to bed only when he chose. To many men who have enjoyed robust health and great capacity for work the sudden deprivation of these accustomed blessings comes with such crushing force as to be almost insupportable. Gray, however, showed the same calm philosophy which was characteristic of him throughout his life. To one who ventured a few words of sympathy for his lessened activity, he replied merely, "It is wonderful how the back accommodates itself to the burden." His manner remained the same as ever, his intellectual interests as keen; he was planning a little further

revision of his lectures on Jurisprudence. He said nothing of his disabilities nor betrayed by manner or expression that his lot had become a hard one. The courage he showed in the Civil War half a century before did not desert him.

GRAY, ROLAND, A.B. 1895, LL.B. 1898, son of the above, was Lecturer on the Law of Property for three years, from 1910 to 1913. He taught the course in Wills. In 1913, when his father retired from teaching, he undertook, at very short notice, to teach the course in Property III and conducted it to a successful conclusion. He has practised law in Boston since he graduated from the School.

GREEN, FREDERICK, A.B. 1889, LL.B. 1893, son of Nicholas St. John Green (*q.v.*), entered practice in New York after his graduation from the School, but was compelled to retire by ill health. On his recovery, he was appointed Lecturer on Admiralty for the School in the academic year 1903–04. In the following September he became Professor of Law in the University of Illinois, where he is now teaching.

GREEN, NICHOLAS ST. JOHN, A.B. 1851, LL.B. 1853, was a successful practitioner in Boston, especially in criminal law. His argument against the constitutionality of a statute requiring the defendant in a civil action to file an affidavit of merits[1] won high praise from the American Law Review,[2] and although the court did not agree with him, the Legislature did and soon afterwards repealed the statute.[3] He served as Lecturer at the School, 1870–73, teaching Criminal Law, and Torts, which was given for the first time as a separate branch of the law. For use in this course Green prepared an abridged edition of Addison on Torts, which called forth the famous statement in the *American Law Review*, "We are inclined to think that Torts is not a proper subject for a law book."[4] The same article speaks of Green as an "able lecturer, of subtle and patient intellect, who is achieving so deserved a success at Cambridge." His writings on Torts present points not elsewhere raised and still make good reading. He was very much liked by the students, full of interesting stories of his cases, a good fellow in class and out, — as Professor Brannan puts it, "just like one of us."

[1] Hunt *v.* Lucas, 99 Mass. 404. (1868).
[2] 4 Am. L. Rev. 576.
[3] Mass. Acts 1870, c. 68.
[4] 5 Am. L. Rev. 341.

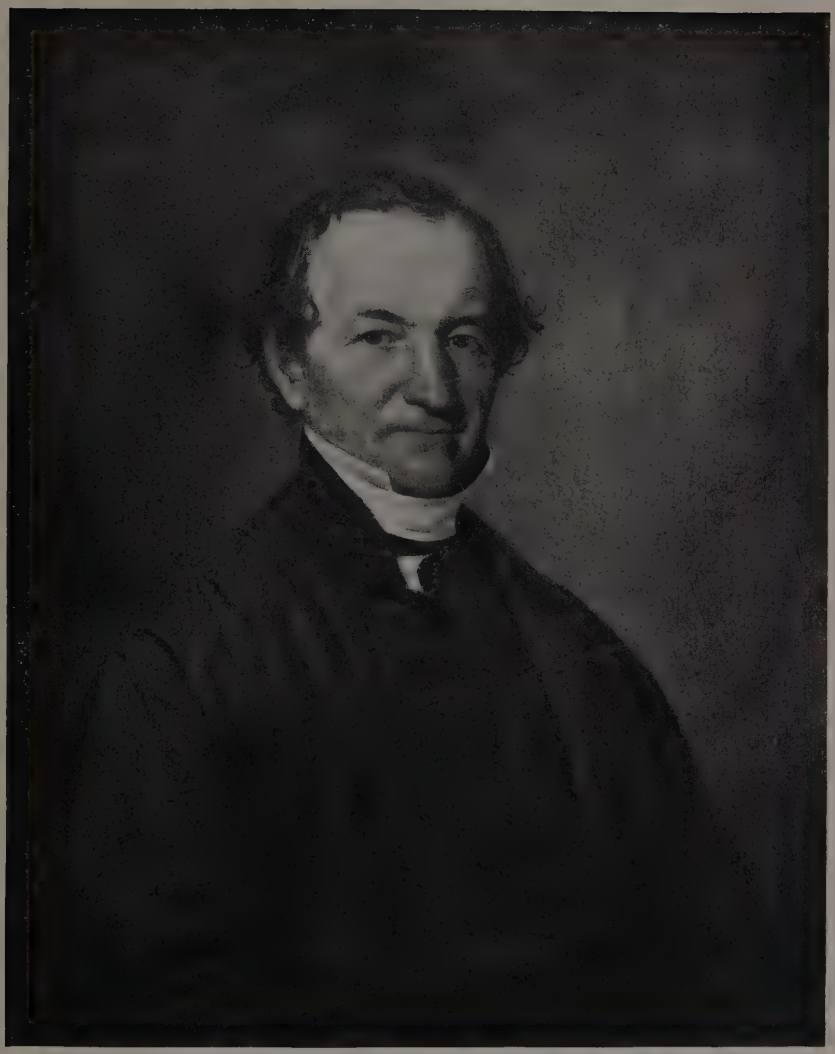
In 1873 he gave up his lectureship to teach at Boston University Law School, of which he was Dean from 1875 until his death in Cambridge, September 8, 1876. One of his later students says of him, in words that apply equally well to his Harvard teaching, "His weakness, if he had any, as an instructor, was his contempt for the maxim *stare decisis*. He loved to attack adjudications. He had a great fund of good nature, of which the students often availed themselves during his lectures by questions which were not always relevant to the point at issue, and which he always received pleasantly, and in fact seemed to enjoy."[1]

GREENLEAF, SIMON, was born in Newburyport on December 5, 1783, the son of Captain Moses Greenleaf and his wife Lydia (Parsons). Three of his ancestors were military officers, and his grandfather was for over twenty-five years a member of the Massachusetts Legislature. Greenleaf studied law in the office of Ezekiel Whitman of New Gloucester, Maine, afterward Chief Justice of the State, and was admitted to the bar of Cumberland County in 1806. He was married in the same year to Hannah, daughter of Captain Ezra Kingman of Bridgewater. He began the practice of the law at Standish, Maine, and after a year's residence at that place removed to Gray. There he remained until 1818 when, his business having become widely extended, he removed to Portland. There, to quote the language of the Honorable William Willis in his history of the Courts and Lawyers of Maine: "He took rank among the foremost at the bar and by his winning manners and persuasive style of speaking and address, accompanied by the skill and ingenuity of his arguments, established his reputation on a firm basis." In 1820 when Maine became a State he was appointed reporter of decisions, and he continued to hold this office for twelve years. His reports, which extend from the August term of the year 1820 through the July term of 1832, rank high among those in the United States.

In 1821 Greenleaf published his "Collection of Cases Doubted and Overruled," which seems to have been the first book of the kind. During its preparation he corresponded with Story, whose attention had also been called to him in the United States Circuit Court in Portland by Greenleaf's mastery of admiralty law. When Ashmun's death made it necessary for Story to seek

[1] George R. Swasey, Boston University Law School, 1 Green Bag 57. (1889.

another colleague, he suggested Greenleaf to the Corporation, who appointed him Royall Professor, on April 23, 1833. Greenleaf felt that there was some peril in a change from practice to teaching at the age of fifty, and it was not without much misgiving and many fears that he accepted the position. His new duties pressed upon him at first, and for a considerable time, as a painful burden, filling him with the constant dread that he had assumed a duty too large for his fulfilment. Greenleaf settled in Cambridge in August, 1833, occupying a house on Hilliard street near Story's residence, and began work in the autumn. His reputation increased the numbers at the School and Story could depart for Washington in December with an easy conscience. Professor Parsons says: "Judge Story and Professor Greenleaf worked together harmoniously, and successfully; the more successfully, certainly, and perhaps the more harmoniously, because they were so entirely different. . . . Greenleaf was singularly calm, finding strength in his very stillness, and if by nature, as some indications suggested, subject to impulse, an habitual suppresser of impulse, always cautious, and therefore always exact. Story was as vivid and impulsive as man could be. . . . Pouring forth his varied and inexhaustible stores of learning, and with them the suggestions of an exuberant fancy, he surrounded a question with a blaze of light that sometimes flickered and disturbed the vision; while Greenleaf's fewer illustrations were just those which were needed to bring the determining principle clearly before the apprehension. Story's manner was most peculiar; everybody listened when he spoke, for he carried one away with the irresistible attraction of his own swift motion. And Greenleaf, somewhat slow and measured in his enunciation, by the charm of his silver voice, the singular felicity of his expressions, and the smooth flow of his untroubled stream of thought, caught and held the attention of every listener as few men can. No wonder that such a man as either of these succeeded; no wonder that a school, in which were two such men, succeeded. And their success was so great, and so large a portion of it was due to each, that it is not worth while to attempt to apportion it exactly. But if I were to endeavor to do this, I should say that Story prepared the soil, and Greenleaf sowed the seed." Parsons hints that Story devoted a considerable portion of the lecture hour to biographical sketches of the famous lawyers and statesmen whom he had known, so that it was fortunate that the school also possessed a technical



SIMON GREENLEAF

Royall Professor, 1833–1846, Dane Professor, 1846–1848

(From the portrait by G. P. A. Healy in the possession of the School.)

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lawyer, who "confined every word to the subject of the lecture." Story himself wrote Greenleaf in response to the dedication of the first volume of the Treatise on Evidence: "We have shared the toils together . . . But for you, the School would never have attained its present rank. Your learning, your devotion to its interests, your untiring industry, your steadfast integrity of purpose and action, — have imparted to all our efforts a vigor and ability, without which, I am free to say, that I should have utterly despaired of success. Nay, more, but for your constant coöperation and encouragement in the common task, I should have drooped and lingered by the way side."

To the students the two men "seemed fond of each other, and a vein of humor would appear in each of them whenever they talked upon questions in which we knew they differed." For instance, Story was enthusiastic and eloquent about the Civil Law and Greenleaf about the Common Law.

Unlike Story Greenleaf asked many questions at every lecture. After a week in the School, Rutherford B. Hayes wrote in his diary, "It is impossible for one who has not studied the text to escape exposing his ignorance; he keeps the subject constantly in view, never stepping out of his way for the purpose of introducing his own experience."

If the answer to a question was incorrect, or not clear, further questions were asked, in a pleasant, agreeable manner, but the student after one such questioning never forgot to be better prepared for any subsequent lecture under Greenleaf.

Although some men thought Greenleaf reserved and sarcastic and called his reasoning hair-splitting, he seems to have been much liked and admired by most of the students, who spoke of him among themselves as "Old Green." In those days when collegians were treated like school-children, it must have been refreshing to hear him say that "law students had come to learn the law, and it was presumed, understood the importance of correct conduct — that was a matter submitted wholly to themselves. He and his brother of the Faculty were not there to act as high constables over a parcel of legal gentlemen."

Greenleaf still continued practice and went into Boston nearly every day for a few hours. At length he obtained permission from the Corporation in 1842 to remove his residence to Boston. He frequently appeared in the Massachusetts Supreme Court and the United States Circuit Courts, and in 1834 was retained as chief counsel for the Warren bridge in the famous case of

Charles River Bridge *vs.* Warren Bridge.[1] Inasmuch as the Charles River Bridge tolls went to Harvard College, Greenleaf incurred some unpopularity by taking the case, but there was no official objection, and the Corporation granted him leave of absence for a fortnight to argue the cause before the Supreme Court of the United States. A copy of his brief with the manuscript annotations which he made in preparing for the argument is now in the Law School library. It won him high praise from bench and bar. During his absence the Law School students entered eagerly into the contest. Sumner was obliged to explain again and again the nature of the question and Greenleaf's position.

Meanwhile Greenleaf spent his vacations in hard work upon his book on "Evidence" which began to appear in 1842. It was for many years the only thorough work on the subject, and was honored by constant use in this country and plagiarism in England.

In 1845 Story died. Eight days later, on Story's birthday, Greenleaf, at the request of the Corporation and the Law School students, delivered an address upon Story, before the Law School and the University, of which Dana said: "I never saw more fixed attention. When he closed every man seemed to move in his seat for the first time." Greenleaf was now made Dane Professor, and William Kent became Royall Professor, but resigned after a year so that Greenleaf was once more left alone. At length Joel Parker was secured, and now that the School was in good hands, Greenleaf decided to resign, stating that his health demanded a long rest. His resignation was accepted by the Corporation with great regret on June 10, 1848. At the request of the law students, Greenleaf consented to sit to Healy for his portrait, which was placed in the Dane Hall lecture room.

The year after his retirement from the Law School, he was appointed one of the judges of the Supreme Judicial Court of Massachusetts, but declined. He continued, however, actively engaged in professional practice, and especially in work connected with his books, until his death on October 6, 1853. The closing day of his life is described by Parsons: "He exercised his habitual kindness by bringing a stranger to our Hall, and opening to his wants the wealth of our Library. He had gone into the neighboring city, and there employed himself

[1] 11 Peters 420 (1837).

with his usual activity. And when evening brought on the hours of rest, he rested as he loved to rest, in working still. A proof-sheet of the book he was then publishing was brought to him. Upon that paper he wrought; he folded it, and after his family devotions, retired; — and died."

Like most New England lawyers of his time Greenleaf took an active interest in public questions and in the benevolent institutions and associations which existed in the communities in which he lived. Such activities, however, leave little direct personal trace, and we know only that for several years he was the President of the Massachusetts Bible Society, that he was largely interested in the establishment of African colonization and prepared the original Constitution adopted by the Colony of Liberia. He was also a member of the Maine Historical Society, of the Massachusetts Historical Society, and of the New England Historic, Genealogical Society.

In appearance Greenleaf was a grave, sedate looking man, very quiet in his movements, about five feet ten inches in height, rather stoutly built, full face, with small sharp eyes, nearly black. His hair was very dark brown — some called it black — and grew in profusion; his posture a little stooping, with his head projecting forward; his countenance expressive of benignity and intelligence.

"There was indeed," says Samuel F. Batchelder, "a strong Puritanical cast about the author of the Treatise on Evidence. This is observable in his portrait in the reading-room. He used to annotate a portion of the Bible every day; and he published an attempt to apply the rules of evidence to the writings of the Evangelists, which proved more of a curiosity than a success. In one of his letters he describes himself as cultivating cheerfulness as a religious duty. What few specimens of his wit remain, however, lean toward the ponderous, and would tend to prove that his cultivation was carried on upon a somewhat barren soil. In his sitting-room he would write or study for hours, surrounded by his family and their friends, conversation, games, music, and the thousand distractions of a household that was distinctly a 'going concern,' yet absolutely serene and undisturbed, so great were his powers of concentration."

HOLLIS, SAMUEL HUDSON, A.B. 1898, LL.B. 1901, entered practice in Lynn, Massachusetts, where he still remains. He

was Lecturer on Insurance for the year 1904–05, and during the next year served as Instructor in Property.

HOLMES, NATHANIEL, A.B. 1837, LL.B. 1839, was born in Peterboro, New Hampshire, January 2, 1815. He entered practice in St. Louis in 1839, was counsel for large enterprises, and served as judge of the Supreme Court of Missouri from 1865 to 1868. In 1868 he became Royall Professor, and resigned May 6, 1872 doubtless because of his inability to accept the reforming measures of the new Dean. He returned to practice in St. Louis, but finally retired in 1883 and returned to Cambridge, where he died February 26, 1901. Professor Holmes never married, and lived a quiet, retiring life. He wrote nothing legal, but solaced his leisure with a disquisition upon the "Authorship of Shakespeare," in which he urged the Baconian hypothesis, and a work on "Realistic Idealism in Philosophy Itself." He was a prominent Swedenborgian, and thus gained the friendship of Parsons.

HOLMES, OLIVER WENDELL, son of the poet and essayist of the same name, was born at Boston, March 8, 1841. He graduated from Harvard in 1861, and enlisted on April 4 in Stevenson's battalion, writing his class poem while in the ranks. On July 10 he entered the 20th Massachusetts regiment, in which he served as Lieutenant and Captain for three years, and was several times wounded. After the war he entered the Law School, from which he graduated in 1866. After some office study he was admitted to the bar in 1867 and began practice in Boston. He edited volumes 5, 6, 7, of the *American Law Review*, and the 12th edition of Kent's Commentaries; delivered lectures at the Law School in 1871–2, and 1872–3, and a course in the Lowell Institute (1880–81), which was published under the title, The Common Law. He accepted the Weld Professorship in the Harvard Law School in January, 1882, with the condition that he might resign if appointed to the Supreme Judicial Court of Massachusetts; and he accepted an appointment to that court in January, 1883. He delivered an eloquent and inspiring oration at the first meeting of the Harvard Law School Association in 1886. In 1899 he became Chief Justice, and in 1902 was appointed to the Supreme Court of the United States.

Judge Holmes is a great legal historian, but his knowledge of the history of law does not prevent an intense modernity of thought in his opinions. It would be improper while he is still on the bench to express a critical opinion as to the value of his legal

services; but it is safe to say that no judge stands higher than he in the qualities of knowledge of legal principles, appreciation of social necessities, adaptation of law to life, and forcible expression of fundamental truths.[1]

HOWLAND, HENRY, A.B. 1869, LL.B. 1878, attended the University of Heidelberg between College and Law School. He was Instructor in Torts four years, from 1879 to 1883. He practised law in Boston until his death, July 11, 1887.

HUGHES, CHARLES JAMES, JR., A.B. (College of Richmond, Missouri) 1871, LL.B. (Missouri State University) 1873, was born in Kingston, Missouri, 1853. He practised law in Richmond, Missouri, until 1879, when he went to Denver and became a leader of the Bar of Colorado. He was especially proficient in Mining Law, which he taught in the University of Denver. When lectures on Mining and Irrigation were given for the first time at Harvard Law School in 1902–03, Mr. Hughes taught the course and repeated it in 1905–06. In 1909 he was elected United States Senator from Colorado. He died in Denver January 11, 1911.

HUNTINGTON, FRANCIS CLEAVELAND, A.B. 1887, LL.B. 1891, a member of the New York Bar, was Lecturer on the New York Code for two years, from 1895 to 1897.

KALES, ALBERT MARTIN, A.B. 1896, LL.B. 1899, has practised law in Chicago since graduation, specializing in advocacy. From 1902 until 1916 he taught at Northwestern University School of Law, becoming Professor of Law in 1910. He came to Harvard Law School in 1916–17 as Professor of Law, giving Property III Deeds, and Restraint of Trade. Despite his great success as a teacher at the School, he has decided to devote himself entirely to practice and writing.

Mr. Kales has for many years filled an unusual position of service to Harvard Law School, by subjecting its theories of law and law teaching to continuous and beneficial criticism. For years he carried on with John Chipman Gray a correspondence about future interests, now in the possession of the Library, out of which came several articles on both sides. Mr. Kales' attacks on the nonpractising law teacher and the nonlocal case-book have rallied members of the Faculty to the defence of these well-tested

[1] See 33 Am. L. Rev. 753; Justice Holmes and the Law of Torts, John H. Wigmore, 29 H. L. R. 601; The Constitutional Opinions of Justice Holmes, Felix Frankfurter, 29 H. L. R. 683.

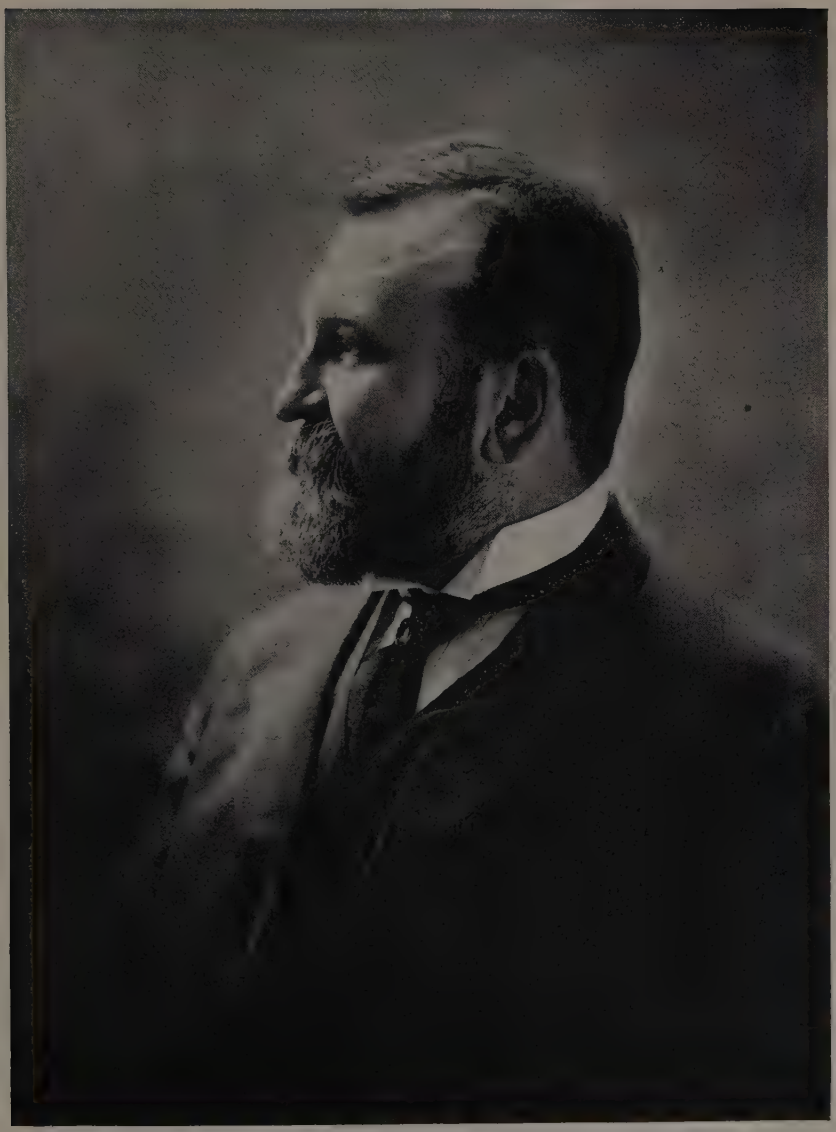
traditions. Whether teaching in Cambridge or regrettably absent *in partibus infidelium* he has always put Harvard Law School on its mettle.

KEENER, WILLIAM ALBERT, was born at Augusta, Georgia, March 10, 1856. He was educated at Emory College, Oxford, Georgia (A.B. 1874), and Harvard Law School (LL.B. 1877). He was admitted to the bar in New York and after four years' practice in New York City was appointed Assistant Professor of Law in Harvard Law School on May 14, 1883. In 1888 he was made Story Professor. In 1890 he resigned and returned to New York, where he became Professor of Law at Columbia University (1890), Kent Professor of Law (1892), and Dean of the Law School (1891). On September 11, 1902, he was appointed Justice of the Supreme Court of New York to fill an unexpired term and resigned his professorship at Columbia. On the expiration of his term as judge he engaged in the practice of law in New York City for the remainder of his life. He died April 18, 1913.

Keener was a natural teacher. He was, perhaps, at his best with first-year men, who began by hating him, presently admired him grudgingly, and by the middle of the year swore by him. He had a remarkable power of forcing even the dullest to see a point or follow a train of reasoning by sheer weight of argument. He was a persistent and relentless cross-examiner, catching up everything the student said and compelling him to justify it, ruthlessly exposing all fallacies, dragging the student out of all bypaths of argument, and making him tread the straight and narrow path of dialectic whether he would or not. No student of his who in his first month ventured to support his argument by the statement that a certain court had so held in a certain case will ever forget the retort: "But suppose the court had held the other way?"

While Keener's forte was teaching, his Cases on Quasi-Contracts (1888) and Treatise on Quasi-Contracts (1893), the latter representing his teaching notes upon the former, have been the basis of all that has since been done upon that subject. He also compiled case books on Contracts, Equity, Jurisprudence, and Corporations, which have been widely used.

No account of Keener would be complete which omitted mention of his valiant and successful fight for the establishment of Langdell's method of teaching. Only his vigorous personality and ability as a teacher could have established this method at Columbia in the face of the Dwight tradition. Where Langdell and Ames



WILLIAM ALBERT KEENER

remained silent under attacks and misrepresentations, Keener took up the cudgels and fought stoutly in print and before bar associations. His controversial writings were a chief factor for a better understanding of instruction through cases and accelerated the general acceptance of Langdell's system which came later.

KENT, WILLIAM. The choice of the Corporation for successor to Story finally fell on William Kent, son of the great Chancellor of New York and commentator. William Kent had been a Judge of the Circuit Court of New York, and Professor of the Law of Persons and Personal Property in the first short-lived law school of the University of the City of New York. Professor Kent was born in Albany, October 2, 1802, and graduated at Union College. After several years of large practice in New York, followed by service on the trial bench, he came to the School in the fall of 1846 in the full maturity of his intellectual powers; and he bade fair to equal Story's success as a teacher. He was a man, as was said in the *Law Reporter*, "not more respected for his attainments and abilities than beloved for his warmth of heart, his simplicity of character, and purity of life and conversation."

The increasing infirmity of his venerable father compelled him to resign after a single year of service; and his resignation was accepted by the Corporation with deep regret. He died in Fishkill, New York, January 4, 1861.

LANGDELL, CHRISTOPHER COLUMBUS,[1] A.B. 1851, LL.B. 1853, A.M. 1854, first Dean of the Harvard Law School and founder of the case system, was born in the small farming town of New Boston, New Hampshire, May 22, 1826. His ancestors on the father's side were English and all farmers. His mother's family, the Beards, were Scotch-Irish. It was from them that Langdell inherited his intellectual gifts. The Beards were generally good scholars and many of them were teachers. His sister taught before her marriage and was a book-lover all her life.

"It was Langdell's very great misfortune to lose his mother when he was only seven years old. Three years later his home was broken up and thereafter Langdell lived in different families, working in the summer and going to the district school in the winter.

[1] The paragraphs in quotation marks, unless otherwise ascribed, are reprinted by permission from the life of Langdell by James Barr Ames in Vol. VIII of Lewis' "Great American Lawyers": Philadelphia. The J. C. Winston Co. Some other passages are based upon the same life.

"He was not precocious, but studious and ambitious, winning the confidence and approval of his teachers. One of them was wont, if called out of the school-room, to leave Christopher in charge of the pupils. It was probably this teacher who made him a present of a new Latin dictionary on the condition that no student was to know who gave it to him.

"When he was sixteen, his sister Hannah, two years his senior, who had been for six years in Massachusetts, and whose constant wish was that 'he might have a liberal education and become a distinguished man,' made a visit to New Boston. 'He came to see me there,' she writes, 'and there opened his heart to me for the first time, and it was also the first time he had made known his aspirations to any human being. He told me that he had a very strong desire for a college education, but did not see how it could be accomplished.' His sister encouraged him to make a beginning and to believe that a way would be opened. She promised to help him so far as she could.

"He taught his first school the following winter at Wilton, New Hampshire. In 1844 he worked for several months in one of the Manchester mills.

"The venerable John Cross, of Manchester, who was then just starting in practice, recalls with pleasure an interview with Langdell, who called in the same year to ask if it were possible to realize his dream of going to college. The young lawyer encouraged him to try to work his way through Exeter, telling him that if he succeeded in this he could probably do the same at Cambridge. He acted on this advice, entering Exeter in the spring of 1845. He hoped to get upon the foundation, that is, to receive one of the scholarships awarded in July. But this hope was not gratified. His failure to win a scholarship, coming as it did after he had given a part of his hard-earned money to help his father, was probably the keenest disappointment of his life. Almost heart-broken, he sat down upon the steps of the Academy building and burst into tears. But in spite of this blow he did not waver in his purpose. He remained at the Academy, being employed to ring the Academy bell, and in other work. His sister Hannah sent him occasionally small sums of money out of her earnings, saying to herself each time as she dropped the letter into the box, 'This is the happiest day of my life.' His younger sister, Mary, who died in 1850, at the age of seventeen, also made him small gifts. It is quite possible that, without the encouragement and touching devotion of his

sisters, each of whom, like himself, worked for a time in a mill, he might not have realized his ambition for a college education. His abilities were discovered by the teachers, and the next July he won a scholarship which he held until he left Exeter in the summer of 1848. His rank rose each year. His 'improvement' in the last year was marked 'distinguished.'" He possessed, as he afterwards said of himself, "the virtues of a slow mind."

"He was older than his schoolmates, and he had neither the time nor inclination to engage in their sports. But he had their thorough respect and liking. In 1847 he was elected president of the Golden Branch, the literary society of the Academy. To the end of his life he retained vivid recollections of his life at Exeter, and a strong interest in the place and the school. Being asked in later life what it was that he felt he owed to Exeter, he said: 'I was a boy. I had lived on a farm and as a mill hand at Manchester. I went to Exeter —' and then after a pause added, with much feeling, 'Exeter was to me the dawn of the intellectual life.'

"From Exeter he went to Harvard College, entering the class of 1851 as a fresh-sophomore. At the end of the year he ranked second in his class. His recitations made a strong impression upon his classmates, and it was the general opinion that, if he completed the course, he would lead the class. In September, 1849, the faculty assigned him a junior exhibition part, a Greek version, but afterwards excused him from performing it 'on account of his delicate health.' Early in December he, with twenty-five of his classmates, was granted leave of absence for the remainder of the term for the purpose of teaching school. Langdell did not return to college, partly for pecuniary reasons, and partly because he thought he was not getting enough out of his college life to make it worth while to delay longer the beginning of his legal training. After acting as a private tutor for a few months in Dover, he went back to Exeter and studied law for eighteen months in the office of Messrs. Stickney and Tuck. He was still working his way. One of his Exeter contemporaries writes:

"'One noon when we returned from the Academy, a young man was sawing wood in the back yard, and was at the same time reading a law book that lay upon a pile of wood before him. That was Langdell.'

"November 6, 1851, he entered the Harvard Law School. Although the course was then only a year and a half, he

remained at the school for three years, being, during the greater part of the time, librarian as well as student. His exceptional ability was recognized alike by the professors and by his fellow-students.

"He was engaged by Professor Parsons to assist him in the preparation of his work on Contracts, and contributed many of the most valuable notes in that widely-used book. His eyes were not strong, and the brightest men in the school were eager for the privilege of reading law to him for the sake of hearing his suggestions and comments upon the opinion of the judge or the statements of the writer. At commencement in 1854, when his college classmates, according to the practice of that day, received their degree of A.M., simply because they had lived three years after graduation, Langdell, although not a Bachelor of Arts, received the distinction of an A.M. *honoris causa.*

"Judge Charles E. Phelps, of Baltimore, who was in the Law School with him, gives this reminiscence of Langdell:

"'He always wore a green-lined dark shade. Under his auspices there were a dozen of us who clubbed together. There I saw his "case system" in the making, although at the time I did not realize it. Over our sausage and buckwheat, or whatever it was, we talked shop, nothing but shop, discussed concrete cases, real or hypothetical, criticised or justified decisions, affirmed or reversed judgments. From these table-talks I got more stimulus, more inspiration, in fact, more law, than from the lectures of Judge Parker and Professor Parsons.'

"Judge Phelps alludes also to his 'almost fanatical and somewhat contagious enthusiasm as a student,' which is illustrated by a story of his contemporaries in the school, who found him one day in one of the alcoves of Dane Hall absorbed in a black-letter folio, doubtless a year-book. As he drew near, Langdell looked up and said, in a tone of mingled exhilaration and regret, and with an emphatic gesture, 'Oh, if only I could have lived in the time of the Plantagenets!' He roomed in Divinity Hall, but he was so constantly in the law library and so late at night, that some of the students used waggishly to say that he slept on the library table.

"Certainly his three years at the Law School were very happy years. He was realizing to the full the joy of the intellectual life. He had ample opportunity to seek the sources. Before long, as one of his friends writes, through his editorial work for

Professor Parsons, the wolf was driven from his door never to return. The quality of his fellow law students was exceptionally high." Among them were James C. Carter, the three Choate brothers, James B. Thayer and Addison Brown. He saw much of Charles W. Eliot, then an undergraduate. One of Langdell's close friends, William Gibbons, was told by his father, James G. Gibbons, "The acquaintance and confidence of one such person is worth that of fifty common men."

In December, 1854, Langdell left the Law School and began practice in New York City, where he remained until 1870. For several years he was alone. His first important case was in Massachusetts, turning upon the construction of a will, and was given to him in the spring of 1856 by his Exeter and college friend, Joseph G. Webster.[1] He spent much of his time in the library of the New York Law Institute. The librarian being asked one day by Charles O'Conor where to look for the law on a certain question, pointed to Langdell and said: "That young man knows more about the law on such a matter than any one else." After this the young man assisted Mr. O'Conor in several important cases, notably in the celebrated Parish will case in 1857. He was unheard of by the rank and file of the bar, but when the triumphant advance of opposing counsel was turned to rout by a sudden pitfall in the pleadings or an unexpected ambush in the argument, the well-informed would mutter, "Damn it, Langdell's at the bottom of this somewhere!" In the summer of 1858 he formed a partnership with William Stanley, which subsequently became Pierrepont, Stanley, and Langdell, and later, Stanley, Langdell, and Brown, the junior partner being Addison Brown, later United States District Judge.

"Langdell did not often appear in court, and, leading a secluded life, was not generally known even by lawyers; but by those with whom he came in contact he was recognized as an invaluable ally, and a very formidable antagonist in any controversy turning upon points of law. A narrow winding staircase led from the office of his firm to a room above, which was his private office, and adjoining it was his bedroom. In the almost inaccessible retirement of his office, and in the library of the Law Institute, he did the greater part of his work. He went little into company. He was a dear friend of the family of his partner, Stanley, and his friendship with William Gibbons

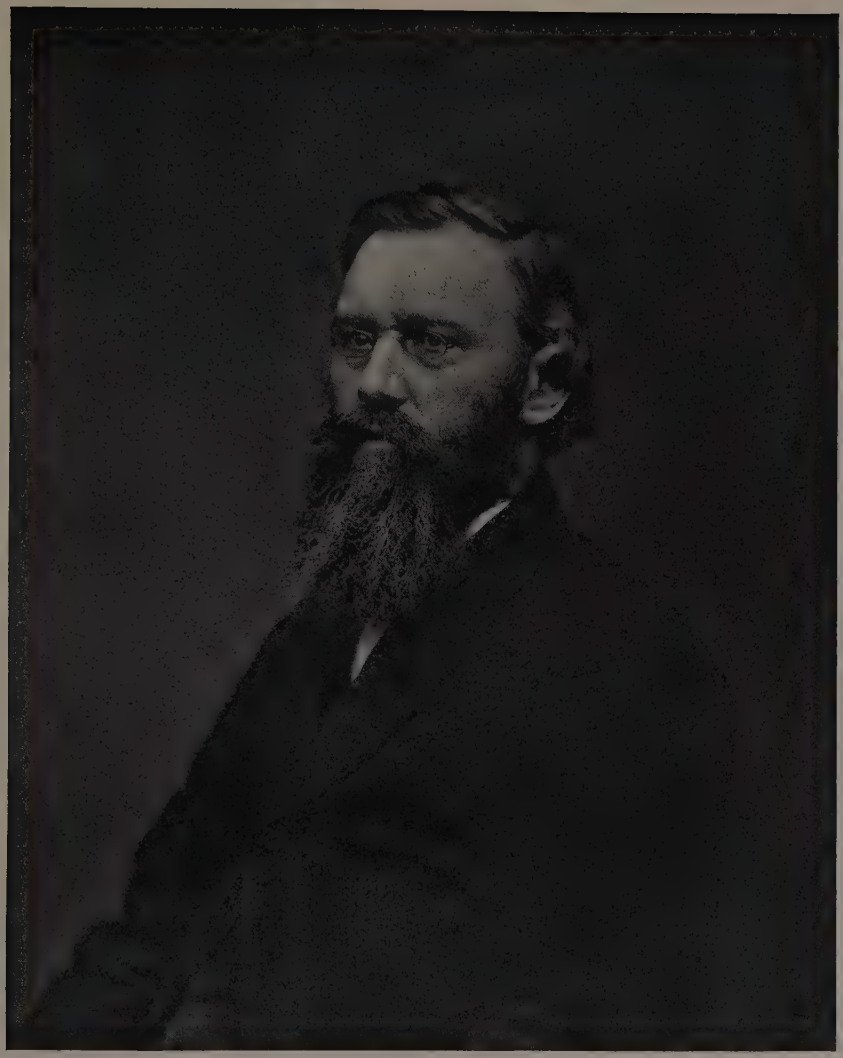
[1] Kuhn *v.* Webster, 12 Gray's Reports, 3.

gave him so cordial a welcome from his friend's father and mother and sisters, that he passed many evenings and Sundays with that hospitable, cultivated, and attractive family. At one time during his calls, the young ladies read Dickens aloud, and were surprised to find that when any place in or near London was mentioned, Langdell could tell them just where it was and all about it, although he had never been in England. This incident is a typical instance of the painstaking thoroughness with which he explored any subject that interested him, and of his vividly tenacious memory."

It was not until 1870, when he had reached the age of forty-four, that he found his great opportunity. He was asked by his old friend, Eliot, who had just become President of Harvard, to be Dane Professor of Law and was appointed, January 6, 1870. "The characteristic independence of the man and his determination to win only by sheer force of merit are indicated by his attitude during the interval between his interview with the President and his election by the Corporation and Overseers. He was so little known by the members of the governing boards that he was asked to give the names of some New York lawyers who were in a position to answer inquiries as to his qualifications for a law professor. He could not see his way to comply with their request. Pending the confirmation by the Overseers of his nomination by the Corporation, he was invited to meet a number of the Overseers at dinner. This invitation was also declined. He was unwilling to take a single step to influence his own election."

His first term, in the spring of 1870, was not memorable. He lectured on Partnership and on Negotiable Paper. But he was busy collecting his Cases on Contracts, and in the autumn had his first advanced sheets ready for his course. Simultaneously with their publication, he was, in September, 1870, appointed to the new office of Dean of the Law School. The prospectuses of the School for 1870–71 contained for the first time strangely disquieting announcements. Examinations of a "thorough and searching character" would be held at the close of that year. "Each instructor will adopt such mode of teaching the subjects of which he has charge as in his judgment will best advance the pupils in his course."

To introduce a new system of study at the Harvard Law School in 1870 was an act of great bravery. The School had been in existence for half a century. It was in great repute.



C. C. Langdell

CHRISTOPHER COLUMBUS LANGDELL

About 1874, soon after he began to teach

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Its professors had produced treatises which held, and still hold, a high place in the esteem of the profession. Even laymen have heard of the works of Story, Greenleaf, Parsons, and Washburn. Those productions had been largely the fruit of classroom lectures. By the method of instruction then current the student listened to lectures and read treatises; and, in order that the task might not be merely the memorizing of generalizations made by the lecturer or the text-writer, some instructors devoted much time to discussing concrete problems. Many men are still living who know that the work of those old days must not be treated disrespectfully; but Langdell, though trained in the method then current, was of opinion that he knew a method more scientific, more thorough, and better fitted to produce successful lawyers. He knew — as, indeed, every law student learns in the first week of his studies — that the existence and limits of a rule of law must be proved finally, not by a textbook, but by the reported decisions of courts. He knew that when a lawyer has occasion to test a rule of law he searches for those decisions. Langdell determined that the student should be trained to use those original authorities, and to derive from judicial decisions, by criticism and comparison, the general propositions which text-writers, if they do their work conscientiously, find in the same manner, — that, in other words, the student should not be fed with predigested food. The plan, as worked out, was that the instructor should reprint from the reports the cases adapted to show the growth of legal doctrine; that the student should master five or six cases in preparation for each classroom exercise; and that the exercise should consist of stating and discussing these cases and solving related hypothetical problems. However easy it may be to-day to see that this plan is reasonable, in 1870 it appeared to many persons, and indeed to most, impracticable and unscientific. To Langdell it seemed the most natural plan possible. He had devised part of it in his own student days. He understood himself to be simply applying to the student stage of the lawyer's life the method established from time immemorial as to the work of the practitioner and the judge. On the title-page of his first collection of cases, he tied himself to the past by quoting words written by Coke two centuries earlier: "It is ever good to rely upon the book at large, for many times *compendia sunt dispendia*, and *melius est petere fontes quam sectari rivulos*."

Josef Redlich, an Austrian legal scholar, has called the case method "an entirely original creation of the American mind in the realm of law . . . [which] sprang from the thought and individual characteristics of a single man, Christopher C. Langdell." [1] His achievement was something more than the use of cases as part of a legal education. Law students in England had made use of reports from very early times and had supplemented them by hypothetical cases, as in the days when Dudley North used to propound such cases to his fellow diners in the Temple and say that "no man could be a good lawyer that was not a put-case." Langdell went much farther. He insisted that the study of law should be confined to the cases as the original sources and that second-hand material should no longer serve as the basis of instruction. And then by selecting and arranging the cases on a given subject he substituted a systematic study of the reports for the rambling or headlong perusal of his predecessors.[2] It is sometimes said that he sent his students to precedents instead of principles. Sir Frederick Pollock has disposed of this attack. "No man has been more ready than Mr. Langdell to protest against the treatment of conclusions of law as something to be settled by mere enumeration of decided points. . . . Others can give us rules, he gives us methods and the power that can test the reason of rules." [3]

Langdell, for the most part, left the explanation and defence of his method to others. Twice only did he publicly expound it — the first time at the beginning of his teaching career, the second when his success was assured.

In the introduction to his first case book, on the Law of Contracts, he said:

"Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be

[1] The Case Method in American Law Schools, Josef Redlich, N. Y., 1914.

[2] For instances of the study of reports in England, see The Life of Lord Keeper Guildford, Roger North, a very interesting account of English legal education in the seventeenth century; and Campbell's Life of Lord Eldon.

[3] Harvard Law School Association. Report of the 9th Annual Meeting, 1895, p. 17.

traced in the main through a series of cases; and much the shortest and best, if not the only, way of mastering the doctrine effectually is by studying the cases in which it is embodied. But the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion to all that have been reported. The vast majority are useless and worse than useless for any purpose of systematic study. Moreover, the number of fundamental legal doctrines is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and the great extent to which legal treatises are a repetition of each other, being the cause of much misapprehension. If these doctrines could be so classified and arranged that each should be found in its proper place, and nowhere else, they would cease to be formidable from their number. It seemed to me, therefore, to be possible to take such a branch of the law as Contracts, for example, and, without exceeding comparatively moderate limits, to select, classify, and arrange all the cases which had contributed in any important degree to the growth, development, or establishment of any of its essential doctrines; and that such a work could not fail to be of material service to all who desire to study that branch of law systematically and in its original sources."

In his address at the 250th anniversary of Harvard University in 1886 he laid down his two indispensable propositions: "First, that law is a science; second, that all the available materials of that science are contained in printed books." Langdell's second proposition was intended to exclude the traditional methods of learning law by work in a lawyer's office, or attendance upon the proceedings of courts of justice. Experience has shown that he was right in believing that such training was not a necessary part of a legal education. It has, however, become evident in recent years that Langdell's second proposition must be somewhat modified, and that the scope of legal study must extend beyond printed books, certainly beyond law books. Since law is not a water-tight compartment of knowledge but a system of rules for the regulation of human life, the truth of those rules must be tested by many facts outside the past proceedings of courts and legislatures. Not only law in books but law in action has to be considered, and after learning the principles evolved by a process of inclusion and exclusion in the decisions or by intermittent legislative action the legal scholar must find how those principles actually work in the bank, the workshop, the street, and the jail.

Yet this widening of the content of legal study beyond printed books does not in the least impair the validity of Langdell's method, the systematic investigation of the sources of law at first hand, whether those sources be found in the reports and statutes which he had in mind, or in the economic, social, and psychological facts which have demanded attention in recent years.

One of the most interesting signs of Langdell's success is the spread of his method from law into other sciences, such as medicine. Books based on the case method are used in public schools for the study of geography and hygiene, and charitable conferences work out the general needs of the community from the concrete problems of families.

"In the classroom what most impressed Langdell's pupils was his single-minded desire to get at the root of the matter. To this end, in the earlier years of his teaching, he welcomed their suggestions and criticisms, and they, knowing that their views would be received and measured by the same tests by which he wished his own views to stand or fall, entered into the discussion with the keenest enthusiasm. In the seventies the curriculum was very meagre as compared with the courses offered in the next two decades, but in one respect Langdell's pupils in the days when his innovations were on trial enjoyed an advantage denied to those who came to the school after the battle had been won. The master as a pioneer was blazing a new path, and his disciples felt that they too were carrying an axe and were in some measure responsible for the master's success. The intellectual stimulus due to this feeling and to the delightful relations between him and his followers was so great that many of them recognize with gratitude that he did more for their intellectual development than any other man."

To the generation of students which knew Langdell only after the school was settled in Austin Hall his most characteristic quality was patience. Whether in working slowly and carefully to a conclusion or in defending that conclusion against all assaults, he never allowed himself the luxury of assuming a point, however axiomatic it may have seemed to him. If he had occasion to examine a decision, he would study it for hours or for days, lest some feature of it might be overlooked; if he used a case in class, he would state the facts with careful fulness, and he would draw from it not only the lesson that seemed of immediate interest, but every other lesson that could possibly be of value to a lawyer. At that time, as a result of his failing

sight, he never used the Socratic method in his teaching. He simply talked, slowly and quietly, stating, explaining, enforcing, and reënforcing the principles which he found in the case under discussion. And once in a great while something would amuse him, and then he would throw back his great head with a laugh that seemed to have the full strength of his mind in it.

It was largely owing to Langdell's manner in class, and to his careful fulness of statement and of discussion, that his law sometimes seemed too academic; and many of his students said, if they did not really feel, that his teaching was magnificent, but it was not law. He was quoted as speaking of "a comparatively recent case decided by Lord Hardwicke," and he was believed to regard modern decisions as beneath his notice. In the subjects of Equity and Suretyship, which he was then teaching, one might have fancied from his list of cases that Lord Eldon was still on the woolsack and that America was legally undiscovered. Even his warmest admirers felt constrained to give up his course on Mortgages when at Christmastime he was still dealing with the rights of tenant and mortgagee under a common law mortgage, and had not yet informed them that equity preserved a right of redemption after breach. Once when discussing the long obsolete action of fictitious ejectment, he remarked, "Here is a very important practical point. When you bring your action of ejectment, you must always lay your demise before the entry of the casual ejector."

The quietness of his teaching, however, was the quietness of intensive force, and the antique seeming of his law was all on the surface. His students found that they were carrying away his ideas in their heads as well as in their notebooks, and that those ideas really represented the law of to-day. The modern cases they examined for themselves, and annotated their notebooks with them. They found that the judges of the present time were saying precisely the same things which Langdell had been telling them, though possibly the words sounded more modern from their lips. Nearer acquaintance led them to appreciate at its true worth the painstaking and accurate learning of Langdell's mind, as it led them to admiration and affection for the sterling honesty and the untiring generosity of his character. The test of time has certainly justified his teaching, not only in the learning, but also in the preparedness of his pupils for modern conditions and their mastery of modern law.

"Langdell was by nature a conservative. This may seem a rash statement to make of so great an innovator in legal education, and of so independent and original a writer and teacher. But the statement is true. He was conservative, but his conservatism yielded to his irresistible passion for the truth. After a patient and thorough investigation of a subject, he frequently reached conclusions at which he would have looked askance at the outset. He never had occasion to make a careful study of the subject of Quasi-Contracts. He never became quite reconciled to the introduction of this new term into our law, and he could hardly restrain his impatience if one spoke to him of the doctrine of unjust enrichment. Had he explored this subject in his exhaustive manner, it is quite certain that he would have adopted and made constant use of these terms. His passion for truth explains another seeming contradiction in his nature. He was extremely modest, but extremely tenacious of his convictions. This not from any pride of opinion, but because any one who would change his convictions, formed after painstaking examination and much reflection, must plough deeper than he had gone, and, by a wider generalization, expose the error of those convictions. Once convinced of error, no one was readier to admit it. If Langdell ever swerved from his determination to see things as they are, it was unconsciously and because of the defect of another splendid quality, his extreme loyalty to his friends, which in him was almost feminine in its intensity."

The successful assistant of Professor Parsons might have been expected to produce early in his professional career a treatise wholly his own. But Langdell seems not to have had the ambition for legal authorship by itself. Nothing was farther from his mind than the production of a *magnum opus*. His treatises were in a measure forced from him as the natural outcome of the classroom discussions of his collections of cases. But each of them is a solid contribution to the law.

"In his analysis of contracts he emphasized the distinction between unilateral and bilateral contracts, and these terms, which, essential as they are to correct legal thinking, were hardly to be found in any of our law books a generation ago, are now thoroughly domiciled in our legal terminology. There was another distinct advance in the law of contracts when he made detriment, incurred by the promisee at the request of the promisor, the universal test of a consideration."

"To a legal expert the Summary of Equity Pleading, the only

one of his treatises that covers its subject, is the best exhibition of the author's great powers of historic insight, acute analysis, original, sagacious generalization, and vigorous, terse expression. His derivation of the system of equity pleading from the ecclesiastical system, with borrowings from the common law practice, is as convincing as it is fascinating, and, read in connection with the English cases upon equity pleading, demonstrates the practical importance of a knowledge of legal history by those who are administering the law. Had the English equity judges of the seventeenth and eighteeneth centuries been familiar with the historical development of equity pleading, as described by Langdell, suitors would have been saved from a mass of costly litigation, and the reports would not have been encumbered with what must be considered the least creditable judgments in the history of English equity. The part of this classical treatise which is likely to have the most far-reaching influence is the chapter dealing with the nature of equity jurisdiction. It is an ancient maxim that equity acts *in personam.* But to Langdell belongs the credit of emphasizing, as no other writer has emphasized, the importance of this maxim, and of asserting that the power of the chancellor, as representative of the sovereign, to compel the defendant to do what he ought to do and to refrain from doing what he ought not to do, is the key to the whole system of equity. This conception has dominated all his writing and teaching of equity."

Langdell's achievement as Dean of the Harvard Law School has been summarized elsewhere, for it is a vital part of the history of the institution. He wished to see it a great school in a great university, where students should come for scientific investigation. Truly his high ambition was abundantly gratified. He saw the adoption of his method, the raising of standards, the growth of the library, the grouping of skilled teachers around him who would carry on his work. It is no disparagement to his great services, and it is right to add, that his wonderful success would have been impossible without the sympathetic and unswerving support of President Eliot.

And the man himself? Guileless, and shrewd; grave, and cheerful; modest, and fearless; not given to speech; persistent in the search for truth — on the last day of his life, though oppressed by infirmities, doing a full day's work: in short, the man's whole nature harmonized with his rank as a great master.

"Langdell had the gift of a cheerful nature. In the days of

his poverty, one of his early friends writes, 'he struggled with a smiling face.' The same cheerful spirit sustained him in his later years, when failing eyesight debarred him from many pleasures and hampered him greatly in his investigations.

"He cared little for general society, but was an excellent talker. His hearty laugh was as delightful in conversation as it was in the classroom. One always carried away from a talk with him some fruitful suggestion with renewed respect for the man as a deep and original thinker."

Langdell was married in 1880 at Coldwater, Michigan, to Margaret Ellen Huson. They had no children.

In 1895, after a quarter century of service, Langdell resigned the deanship, but continued his lectures as Dane Professor for five years longer. He became Dane Professor Emeritus in 1900, and up to the time of his death, July 6, 1906, devoted himself to writing.

A career so rich in great achievements could not fail of ultimate recognition. Happily, in his case, the recognition came in his lifetime. In 1895, at the close of his deanship, there was a great assembly of Harvard Law School graduates in his honor. In 1903 the Corporation named in his honor a Langdell Professorship, — an unprecedented honor for Harvard to pay to a man still living. The School's new building, begun before his death, is called Langdell Hall, and is believed to be the only university building in America bearing the name of a professor. And Langdell's fame is growing as his ideas are making new converts, — almost every year another law school adopts the case system. The sister, who cheered and helped the farmer's boy in his time of need, had the rich reward of knowing that her brother is likely to be regarded for generations as the greatest of American law teachers.

LATHROP, JOHN, A.B. (Burlington College, N.J.) 1853, LL.B. 1855, was a captain in the Civil War. He was appointed Lecturer on Shipping and Admiralty for 1871–72, and Lecturer on Torts, 1873–74. In 1874 he became Reporter of Decisions of the Supreme Judicial Court of Massachusetts, and held office until his appointment to the Superior Court in 1888. Three years later he was made Associate Justice of the Supreme Judicial Court, and served until 1906. He died in Dedham, August 24, 1910.

LORING, EDWARD GREELEY, A.B. 1821, was born in Boston, January 28, 1802. He began to practise law in Boston in 1824,

being at one time the partner of Horace Mann, was appointed United States Commissioner in 1841, and Judge of Probate for Suffolk County in 1847. On January 31, 1852, he became Lecturer at Harvard Law School, replacing Cushing, who had retired because of ill health. He taught Wills and Administration, Devises, Sales, Arbitration, and Titles by Deed. He worked on a book on "Husband and Wife," which was never written. One of his favorite sayings was that "Husband and wife are one, and that one is the husband." The following year the School had grown to about one hundred and fifty students, and Parker and Parsons urged the Corporation to appoint Loring a professor. The Corporation voted, December 23, 1853, to revive the University Professorship and appoint Loring. The Board of Overseers, which was at that time elected by the Legislature, objected to the appointment, ostensibly on the ground that one man would not have sufficient time to be both judge and professor, but really because of anti-slavery opposition to a man who would be called upon to act in fugitive slave cases.

Loring continued to serve as Lecturer without any reappointment and was very successful in his teaching. Unfortunately, on May 24, 1854, Anthony Burns, an escaped slave, was arrested in Boston and brought before Loring. Richard H. Dana (*q.v.*), one of Burns's counsel and a strong Abolitionist, wrote in his diary on May 25, 1854:

"The conduct of Judge Loring has been considerate and humane. If a man is willing to execute the law, and be an instrument of sending back a man into slavery under such a law, he could not act better in his office than Judge Loring. He professes to detest the law, but he will follow the rigid construction the courts have put upon it as a matter of duty."

On May 26, while Loring was lecturing at the Law School, Wendell Phillips came to him with a note from Dana asking leave for Burns to see Phillips and some colored friends. Loring readily gave this permission, and also afforded Burns proper facilities for legal defence. On June 2 the Commissioner decided that upon the evidence it was necessary to send Burns back to Virginia. This was the last fugitive slave ever seized on the soil of Massachusetts.

Loring's attitude is shown by a passage in his opinion:

"It is said that the statute is so cruel and wicked that it should not be executed by good men. Then into what hands shall its administration fall, and in its administration what is to be the

protection of the unfortunate men who are brought within its operation? Will those who call the statute merciless commit it to a merciless judge?"

Dana's comment on the decision in a letter to a friend was:

"Judge Loring decided wrong — not from any corrupt motive, but from causes partly psychological, and partly accidental. This was a case admitting of, and, to some extent, requiring new applications or developments of fundamental principles, and Judge Loring has none of those strong instincts in favor of justice and humanity, which, followed by judges at intervals, in leading cases, have gradually changed the jurisprudence of England from a system of tyranny to a system of liberty; and the habits and associations of years, as well as his natural character, have led him to look chiefly at the interests of property, and the preservation of quiet and ease."

The question of Loring's reappointment for 1854–55 came before the Corporation in July. Furious opposition arose. A member of the Corporation wrote President Walker: "I do not see why we should demur to do our duty because a few malignants in the Overseers may be disposed to make trouble about it." Parsons and Parker urged that Loring should be retained, stating that he had done a third of the teaching during the past year and that "a similar distribution of the labor for the ensuing year would subserve the interests of the School." On August 26th the Corporation voted that Loring be reappointed and that the appointment be laid before the Board of Overseers for confirmation. An able, anonymous pamphlet in favor of confirmation was addressed to the Overseers, arguing that the Law School, through the attendance of Southern students had been "a very powerful instrument in removing and softening sectional prejudices" and that such students would be turned away if a teacher were dismissed for executing the laws of the United States. Such a policy would have caused the rejection of Story from the Dane Professorship, for he too had before his nomination taken part in the execution of the old fugitive slave law. "It will not do to say that the South may keep their sons at home — that the Law School does not want them. The Law School wants every student from every quarter of the country, whom a broad and liberal management can attract to its halls. . . . It is the only law school in this Union that has that capacity, in any important degree." The Overseers, however, on Feb. 15, 1855, refused to confirm the appointment. It is understood that Emory Washburn was one

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of those who voted for Loring. This is the only time that politics played a serious part in the affairs of Harvard Law School.

At the next meeting of the Parliament of the Law School students, the action of the Overseers became a topic of violent discussion, which was witnessed by Jeremiah Smith, then an undergraduate in the College. The librarian arrived with a note from Professor Parker, requesting the students to leave the matter alone, but the note was snatched out of the librarian's hand and disappeared unread. A motion censuring the Overseers was made and seconded, but objections of Parliamentary Law were raised, and J. B. Thayer, the Secretary of the Parliament, refused to call the roll. Another man was elected as Secretary, but declined to serve. Finally some one more compliant was found and the motion was carried. It found its most energetic supporters among the Southern students, while the leaders of the opposition were Adams S. Hill, later Professor of English in Harvard, George W. Smalley, London correspondent of the *Tribune*, and George Bliss, Jr., afterwards District Attorney in New York City, of whom, when he became a Roman Catholic late in life, the *Nation* remarked that the priest who received his first confession must have learned a great deal about New York politics. This vote called forth a sarcastic editorial in the New York *Tribune*, entitled, "Cockatrices in the Egg."

An endeavor was made to remove Loring from his position of Probate Judge, as well as his lectureship. Petitions were addressed to the Legislature and were supported by Wendell Phillips and opposed by Richard H. Dana.[1] The Governor declined to remove Loring, but his successor yielded to the Legislature and removed him on March 15, 1858. Two months later President Buchanan appointed him Judge of the U. S. Court of Claims. He retired in 1877, and died in Winthrop, Massachusetts, June 18, 1890.

McLAIN, CHESTER ALDEN, A.B. 1913, LL.B. 1915, S.J.D. 1917, was appointed soon after his graduation to give the course on Torts, which had been left vacant by Dean Thayer's sudden death. In the summer of 1916 he served with the National Guard on the Mexican Border. During the next year, 1916–17, he was the first Thayer Teaching Fellow, and at the outbreak of the War, when Professor Frankfurter was called to Washington

[1] These arguments, together with an account of Burns's trial and a large number of sermons directed against Loring, will be found bound together in the Harvard College Library under the title "Pamphlets On Slavery, IX, Burns case, 1854."

for Government service, Mr. McLain took his courses in Public Service Companies, Partnership, and Federal Procedure for the remainder of the year. In order to do this he had to sacrifice the chance to obtain a commission in the army. At the close of the year he enlisted in the Engineers and is now on active service in France.

MILLER, PHILIP LEE, A.B. 1899, LL.B. 1906, was Instructor in Bills and Notes for the year following his graduation. He then entered practice in Decatur, Illinois but has since become a member of New York bar.

NEITZEL, WALTER, a young assessor or assistant judge at Strasburg, was sent to this country in 1908 by the German government to study our laws and institutions. On June 8, 1908, he was appointed Lecturer on the German Civil Code for the ensuing year. Besides delivering lectures, he contributed two articles on German law to the *Law Review*.

OLSON, CLARENCE HARMON, A.B. (Bethany College) 1900, LL.B. (Harvard) 1904, was Lecturer on Admiralty for the year following his graduation. He then entered practice in Honolulu.

PALFREY, JOHN GORHAM, A.B. 1896, LL.B. 1899, was secretary to Justice Gray of the United States Supreme Court for a year following his graduation, and since then has practised law in Boston. He was Lecturer on Massachusetts Practice, in alternate years from 1909–10 to 1915–16.

PARKER, ISAAC, A.B. 1786, the first Professor of Law at Harvard University, was born in Boston, June 17, 1768, and entered Harvard College at the age of fourteen. Shortly afterwards he was on the point of giving up college and apprenticing himself to a druggist, but was prevented by some wealthy men who on the very day that he was starting on his new occupation told him to return to college and they would pay his expenses. After studying law in Boston, he began practice in Castine, then a part of Massachusetts. While residing there he married Rebecca Hall, by whom he had eight children. He was elected to Congress in 1796 but declined reëlection, and after being appointed United States Marshal removed to Portland. There he took high rank at the bar, and 1806 was appointed Associate Justice of the Supreme Judicial Court of Massachusetts. During his first year on the bench he presided at the Selfridge murder trial, famous for the position of the persons involved and their con-

nection with the bitter political controversies of the time. On the death of Chief Justice Sewall in 1814, Parker became his successor. "His appointment gave universal satisfaction," says Story, who, although a political opponent, praises Parker's judicial ability very highly.

Parker is described by a contemporary as "a man of middle stature, of full person and face, light or red complexion, blue eyes, and very high forehead, and remarkably bald. His manners were simple and without pretension to polish. He was very affable, amiable, and unpretending, and a most companionable and agreeable associate in private life. Perhaps no man excelled him in kind and friendly feelings. He used snuff immoderately; it affected his voice in his latter years."[1] His "habitual gayety of spirit" was shown when two strange lawyers who came to call upon him told his servant to announce them as "Mr. John Doe and Mr. Richard Roe." The Chief Justice came forward and extending his hand said, "Gentlemen, I have read of you and heard of you all my life, but I have despaired of making a personal acquaintance."

A year after Parker became Chief Justice, on August 18, 1815, the Royall Professorship of Law was established by the Corporation of Harvard College, who proceeded on September 4th to the choice of a Professor "to give lectures at the University to the members of the Senior class, to the resident graduates and to others who may be permitted to attend according to such statutes and regulations as may be adopted." Parker was chosen by the Corporation, and on October 12th was confirmed by the Overseers. He was to deliver only fifteen lectures but in these he was to cover "the theory of law in its most comprehensive sense," as well as the State and Federal Constitutions, the history of Massachusetts law, the principles of English Common Law and their modification in this country. On April 17, 1816, Parker was inaugurated. His address set the standard for the unborn Harvard Law School, "Well may the law now be denominated a science and deemed worthy a place in the University." This familiar conception of law as a science was to receive an entirely new formulation from Langdell half a century later. Parker went on to show that a complete legal education could not be expected from his lectures and was indeed not useful for undergraduates. Consequently, "a school for the instruction of resident graduates in jurisprudence may be usefully ingrafted on

[1] Charles Warren, History of the Harvard Law School, I, 295.

this professorship; and there is no doubt that when that shall happen, one or two years devoted to study only under a capable instructor before they shall enter into the office of a counsellor to obtain a knowledge of practice will tend greatly to improve the character of the Bar of our State."

In June and July, 1816, Parker delivered seventeen or eighteen lectures covering as best he could the wide field allotted to him, but in 1817 his prophecy was realized and the college professorship became one of the chairs in a graduate School of Law. The founding of the school and Parker's share therein has been described elsewhere in this volume. Asahel Stearns was to conduct the school, while Parker was "to bestow as much of his time upon the school as can be spared from his other public duties — converse with the students on the subjects they may be engaged in, examine them occasionally, and as often as possible read to them a prepared lecture upon such subjects as shall be found most conducive to their improvement."

Owing to his duties on the bench, Parker was able to lecture only during the summer term of college, and took little part otherwise in the conduct of the School. His classroom was still open to undergraduates as well as law students. Dr. Andrew Preston Peabody, who attended the lectures while a senior, says: "Judge Parker's course comprised such facts and features of the common and statute law as a well-educated man ought to know, together with an analysis and exposition of the Constitution of the United States. His lectures were clear, strong, and impressive; were listened to with great satisfaction, and were full of materials of practical interest and value. He bore a reputation worthy of his place in the line of Massachusetts chief justices; and the students, I think, fully appreciated the privilege of having for one of their teachers a man who had no recognized superior at the bar or on the bench."

In 1820 Parker presided over the Constitutional Convention of the Commonwealth.

Parker's hope for a successful school was not realized. On November 6, 1827, he wrote to the President and Fellows: "Having understood from one of your body that it is desirable that the office of Royall Professor of Law now held by me should be vacated, I hereby resign the same." His resignation was accepted.

Parker served as Chief Justice until the day preceding his death, July 25, 1831. Only a few days before, he made a short visit to

Nathan Dane, which is described by Lemuel Shaw, who accompanied him.[1] "At this interview, which naturally led to a comparison of age and professional standing, the Chief Justice stated, not in a boastful spirit, but with an apparent feeling of humble gratitude to Heaven for the favor, that, during the twenty-four years that he had held his seat, he had never been prevented by ill health for a single day, from being in the place where his official duty called him, in every part of the Commonwealth. At that time, three days before his death, judging from his apparent vigor, his healthy countenance, his buoyant and happy spirits, which the anxiety attending the near prospect of severe official duty could not repress, no man could more justly indulge in the anticipation of length of days, and a happy and cheerful old age." On the next day, continues Shaw, Parker "passed part of Saturday forenoon in the Law Library, took a ride in the afternoon, and passed the evening socially with his friends, in apparently good health and with his accustomed cheerfulness. On awaking early on Sunday morning, the 25th, he spoke for a few moments, but with difficulty, and soon sunk into a state of insensibility, under a severe attack of apoplexy, from which he never revived."

PARKER, JOEL, the son of Abel and Edith (Jewett) Parker, was born at Jaffrey, New Hampshire, January 25, 1795. His father served in the Revolutionary Army, first as a private, later as an officer; and was wounded at Bunker Hill. Though not a lawyer, he was for many years Judge of Probate for the County of Cheshire.

Joel Parker graduated at Dartmouth in 1811; was admitted to the bar in 1817; and practised at Keene, New Hampshire, soon attaining an excellent reputation as a lawyer.

In 1833 he was appointed Associate Justice of the Superior Court (the highest tribunal in the state), and in 1838 was made Chief Justice, the appointment in each instance being conferred by a Governor from whom he differed in politics. He resigned the Chief Justiceship in 1848 to accept a Professorship in the Harvard Law School. His decisions appear in thirteen volumes of the New Hampshire Reports, beginning in volume six and ending in volume eighteen. His judicial work was held in the highest appreciation by the ablest lawyers who practised before him. He has always been regarded as one of the greatest judges in New Hampshire; and his reported decisions soon gave him a

[1] 5 Am. Jur. 13.

high reputation in other states. He not only wrote strong opinions, but did excellent work as a trial judge. An able lawyer who practised before him said: "Parker shone above most judges of his time in giving a case to the jury. It is not enough to say that he was lucid and thorough in summing up. He possessed courage and imparted it. He had a living conscience, and animated that of the jury. He indicated the true limits of their function, and so made it easy; eliminating what was mere dispute, and giving, in cases of doubt, all possible aid for weighing evidence and estimating probability. In the language of one who afterwards filled his place, 'he held up a jury'; they always felt the presence of a pure mind and of a friendly counsellor when they listened to his addresses." [1]

Lawyers sometimes complained that he was obstinate, but one of his predecessors in the Chief Justiceship replied: "Judge Parker can afford to be obstinate better than most men, for he is almost always right."

Only a few of his reported decisions can be noticed here.

A decision which was opposed to authority, and was at first generally rejected by other courts, is *Britton* v. *Turner*, rendered in 1834.[2] The plaintiff had contracted to labor for defendant for a specified time at a specified price to be paid for the entire service. After laboring for some time, he voluntarily and unjustifiably refused to complete the performance. The New Hampshire Court held that he did not necessarily forfeit all compensation for his work already performed; but might recover as compensation on a *quantum meruit* the value of the benefit received by the defendant; deducting the damage resulting from his nonfulfilment of the contract. This decision has been the subject of much criticism,[3] and is still a minority view; but it has gradually gained approval in a number of states.[4]

In 1843, in *Pierce* v. *The State*,[5] Judge Parker, sustaining his

[1] Arthur Livermore, quoted in 10 American L. R. 268.

[2] 6 N.H. 481 (1834).

[3] For recent instances, see Keeneron Quasi-contracts, pp. 218–222, Woodward on Quasi-contracts, §§ 167–172, and 174, and 2 Street, Foundations of Legal Liability, pp. 225–226.

[4] It is said to be law in ten states; 1 Mechem on Agency (2d ed.) § 1578: and it has been approved by J. B. Scott, Cases on Quasi-contracts, p. 761, note, and Dillon, J., 18 Ia. 68. The rule in *Britton* v. *Turner* is not generally regarded in New Hampshire as working practical injustice; and it is not likely to be reversed in the state where it originated.

[5] 13 N.H. 536, 556 (1843).

own ruling at *nisi prius*, held that the jury were not judges of the law in criminal cases. The contrary view had theretofore been entertained by some New Hampshire lawyers and judges; and up to that time had not been authoritatively denied.

The fact that a doctrine had been decided the same way an enormous number of times did not, to Judge Parker's mind, necessarily prove its correctness; but on the contrary sometimes gave rise to an unfavorable inference. In *Hall* v. *Chaffee*[1] he said, as to the immense number of decisions sustaining a certain rule in the construction of wills: "They are so many that their very number furnishes cause of suspicion that the rule is not quite sound. . . . It would seem if the rule had a solid foundation, that one fifth, or one tenth, of the number might have settled the question. Its numerical strength, therefore, is weakness."

The feature in Judge Parker's judicial career which most attracted public attention was the conflict between the United States Circuit Court and the State Court, arising out of a clause in the United States Bankruptcy Act of August 19, 1841 and often spoken of as the controversy between Story and Parker, because they were the mouthpieces of their respective courts.

The Bankruptcy Act contains a saving proviso, that it does not destroy liens given by state law. Story had held in 1842[2] that an attachment on mesne process, made before any act of bankruptcy or petition of the debtor, was not a "lien." Two years later Parker held the contrary.[3] The controversy soon went beyond a dispute as to construction, which has been ended by subsequent Acts and could have been settled by a writ of error in the United States Supreme Court, to which the State Court would have at once submitted. But Story did not propose to wait for a decision at Washington. Having drafted the Bankruptcy Act himself,[4] he naturally had great confidence in his own opinion as to its construction and operation, and stated his intention to treat a final State judgment for the lienholder as a nullity and compel the attached property or its proceeds to be put into the Federal court.[5] The State court, through Parker, C. J., immediately announced their intention to meet Story's proposed injunctions by counter-injunctions, concluding, "We shall execute those judgments, and protect the officers of the State in their

[1] 14 N.H. 215, 228 (1843.)
[2] *Ex parte* Foster, 2 Story 131 (1842.)
[3] Kittredge *v.* Warren, 14 N.H. 509 (1844.)
[4] 2 Story, Life of Story 407.
[5] Re Bellows, 3 Story 428 (1844.)

execution, by all the means which the State has placed in our hands for that purpose." [1]

The Legislature of New Hampshire, having had their attention called to the matter by a message from the Governor, passed resolutions approved by him at the close of this year, 1844,[2] intimating that the Governor would call out the State militia, if necessary, to resist the United States Marshal. A few days later Story, in the United States Supreme Court,[3] devoted thirteen out of fourteen pages of an opinion to dicta [4] about the jurisdiction of the United States District Court, and wrote his son that he had [5] covered the whole ground of the New Hampshire cases.

The next year the controversy came before the State court once more, and Parker gave judgment for the lienholder,[6] which was carried to the United States Supreme Court on writ of error. Meantime Story had refrained from issuing orders which would be likely to bring about collision with the State authorities. Before the case was reached, Story died and was succeeded by Levi Woodbury, a former New Hampshire State judge. No extreme measures were taken, and in 1849 the Supreme Court affirmed the New Hampshire decision, [7] agreeing in all respects with Parker's views and making no allusion to Story's extra-judicial opinion. [8]

In 1847 Judge Parker received the unsolicited and unexpected offer of the Royall Professorship in the Harvard Law School. At first he declined, but was finally persuaded to accept. Even after he had been at the School a few months, he subsequently said, he would have gone back to New Hampshire on his hands and knees, had it been possible. He had indeed given up a position of great influence in order to teach. His new duties began at the March term, 1848, with Greenleaf as his colleague. On account of ill health, Greenleaf soon resigned, and was succeeded by Parsons, while Washburn came in 1855 to complete the famous triumvirate.

In Parker's public exercises at the Law School, his so-called "lectures," many beginners did not find him attractive; and the same was often true of the poorer part of the more advanced students.

[1] Kittredge *v.* Emerson, 15 N.H. 227, 256–280 (1844.)

[2] N.H. Laws of 1844, c. 171.

[3] *Ex parte* City Bank of New Orleans, *Re* Christy, 3 How. 292 (1844.)

[4] So termed by Catron, J., in 3 How. 322. See 10 Am. L. Rev. 253.

[5] 2 Story, Life of Story, 509.

[6] Peck *v.* Jenness, 16 N. H. 516 (1845.)

[7] Peck *v.* Jenness, 7 How. 612 (1849).

[8] For a fuller account of this controversy, see George S. Hale, 10 Am. L. Rev. 242–255.

It has been said in criticism of him that he "was precise, minute, and involved to the point of obscurity. If a single step of his logic was lost by the listener, farewell to all hope of following to the conclusion. His law on any given question was sound, absolutely and exasperatingly sound; but he could no more give a comprehensive view of a whole topic than an oyster, busy in perfecting its single pearl, can range over the ocean floor." [1] But a large majority of the best men, such as would under the present system be ranked in Grade A, were constant attendants on Parker's lectures; and it was given to them to realize that they were listening to one of the greatest lawyers of his day. Thus Christopher C. Langdell and James C. Carter are said to have "regarded him as the centre from which the gladsome light of jurisprudence chiefly emanated." Mr. Justice Holmes, who was a student from 1864 to 1866, said in his Oration at the Law School Celebration in 1886: "In my day the dean of this School was Professor Parker, the ex-Chief Justice of New Hampshire, who, I think, was one of the greatest of American judges, and who showed in the chair the same qualities that had made him famous on the bench."

In his pamphlet, published in 1871, on "The Law School of Harvard College," Judge Parker gives some account of the difficulties that confronted him at the outset. A special trouble arose from finding that the subjects of Shipping and Admiralty were upon the list assigned to him, these being topics with which he had hardly any occasion to become familiar. He was unable to effect an exchange with his colleagues, so, "I told the students I would study the textbook with them."

He tells us how he met "another difficulty of a more general character." Textbooks on the various topics were then loaned gratuitously by the School to each student. These books were supposed to furnish the subjects, if not the foundations, of the lectures; and students were expected to study portions of these books in preparation for each lecture. Judge Parker, instead of calling for a parrot-like recitation from the textbooks, subjected each book to a rigid criticism, suggesting qualifications and exceptions and referring to contradictory decisions. He invited questions from the class, and the students availed themselves of this privilege. Questions of all kinds put by any student invariably received from Judge Parker the most careful consideration. "A vague and rambling query, put by an ignorant or thoughtless student, was always met by him with careful and

[1] S. F. Batchelder, Old Days at the Law School, 90 Atl. Mon. 642. (1902.)

exact definition, and doubtless often became the means of firmly fixing a legal principle in the minds of his students." [1]

Parker's opinions in Moot Court cases were very clear and very strong. He seemed to take as much pains "as if they involved final judgments in actual litigation."

Judge Parker did not confine his labors to the work of the Law School. In the earlier years of his professorship he occasionally appeared as counsel in the Courts of New Hampshire and Massachusetts. He was a delegate to the Massachusetts Constitutional Convention of 1853; and the published Debates show that he took an active part in the proceedings. He served upon the Commission for the Revision of the Statutes of Massachusetts, resulting in the General Statutes of 1860.

Parker resigned his professorship in 1868, after twenty years' service. Three years after his resignation, when there was largely a new corps of instructors in the Law School, and when important changes of method were being made, a short article appeared in the *American Law Review*, for October, 1871, which was extremely discourteous to the former administration. It began, "For a long time the condition of the Harvard Law School has been almost a disgrace to the Commonwealth of Massachusetts." It ended, after naming the instructors who were in office in October, 1871: "The learning and ability of these gentlemen warrant us in predicting that their labors will make the Harvard Law School what it ought to be." Almost simultaneously with the appearance of this *Review* article, a Report, made to the Board of Overseers by the Committee appointed to visit the Law School, was published, out of the usual course, in a Boston newspaper. This Report contained passages which might be understood as criticisms upon the former management.

In reply to these productions, Parker published a pamphlet on "The Law School of Harvard College." This pamphlet goes fully into the history of the School, both before and during his administration. *Inter alia*, it brings out the fact that one of the main grounds of complaint in the *Review* — that the degree was conferred without a previous examination — applied to the earlier administration of Story, Ashmun and Greenleaf, just as fully as to the later administration of Parker, Parsons and Washburn. At the end of thirty pages, Parker says: "Thus much for the libel in the *Law Review*." He then devotes sixteen pages to the Report of the Visiting Committee.

[1] 10 Am. L. Rev. 262.

It is to be regretted that the writer in the *American Law Review* was not "content to commend the new order of things, without disparagement of the old"; in which case Parker intimates that the "matter might be passed without notice."

Judge Parker was married January 25, 1848, to Mary Morse Parker, of Keene, New Hampshire. He died at Cambridge, August 17, 1875, being survived by his wife and two children. His son, Edmund M. Parker, is a member of the Massachusetts Bar.[1]

Although Parker "left no one considerable work," yet Professor Washburn was correct in saying that his printed pamphlets and articles if collected, "would form several good-sized volumes." They are not less than twenty-six in number, most of them printed in pamphlet form, several also appearing as articles in periodicals. Some are on biographical or historical subjects, the latest being an address delivered in 1873, at the Centennial Celebration of his native town of Jaffrey. Some are reprints of special lectures given in the Law School upon important topics of the day; some discuss questions of constitutional or international law; and others are directly concerned with pending political issues. Parker, while not a candidate for office, did not hesitate to indicate his political preferences, and to urge his fellow-citizens to take the side which he thought right in an impending election. As a Whig, and a "Conservative Whig," he had supported the Compromises of 1850; but he was strongly opposed to the Nebraska Bill, and to the subsequent conduct of the Democratic National Administration in relation to Kansas. He presided over the meeting of citizens of Cambridge, held June 2, 1856, to denounce the assault on Senator Sumner. Few utterances as to that assault attracted more attention than the conclusion of Parker's speech on that occasion, which was quoted in the *Edinburgh Review* for October, 1856, as "a most pregnant sign of the times in America." "For myself, personally," said he, "I am, perhaps, known to most of you as a peaceable citizen, reasonably conservative, devotedly attached to the Constitution, and much too far advanced in life for gasconade; but, under present circumstances, I may be pardoned for saying that some of my father's blood was shed on Bunker Hill, at the commencement of one revolution, and that there is a little more of the same sort left, if it shall prove necessary, for the beginning of another."

On October 1, 1856, Parker delivered an address before the citi-

[1] While there is no extended Life of Judge Parker, there are several valuable biographical sketches, listed in the Bibliography, Appendix IV.

zens of Cambridge, urging the support of the Republican candidate for the Presidency. Honorable Robert C. Winthrop, in a speech on October 24, criticised "the propriety" of the course "of the learned head of the neighboring Law School, who has felt called upon within a few weeks to quit his official chair, and compromise the neutrality of his position." To this criticism, Parker made a vigorous reply, in a note to his own speech of October 1, when published in pamphlet form.[1]

Upon the breaking out of the Civil War, in 1861, Judge Parker took strong ground against secession, and in support of the war to preserve the Union. But he regarded some subsequent measures of the Federal Administration as conflicting with the Constitution; and did not scruple to say so. In 1862 he took an active part in support of the candidacy of General Devens, when an unsuccessful attempt was made to defeat the reëlection of Governor Andrew. In the classroom he expressed himself very strongly against Lincoln's suspension of the writ of habeas corpus. A student once interrupted him by stating a very strong case of treasonable acts against the government and asked him if he would not suspend the writ in such a case. "No, sir," said the judge, "I would not suspend the writ of habeas corpus, but I would suspend the corpus."

Any one who had only known Parker socially and witnessed his fondness for flowers, or who had only heard him lecture on an ordinary legal subject, would have been surprised at the tone and temper which often characterized his published writings on controverted topics. In social intercourse he was a gentleman of the old school, one of whose marked traits was courtesy to all men. But in his writings on public matters he was generally pugnacious, frequently sarcastic and sometimes bitter. "A good stand-up fight was meat and drink to him, and he entered it with a genuine neck-or-nothing, never-say-die relish."[2] The explanation is to be found in the intensity with which he held his views on such subjects. As was said of one of his successors in New Hampshire, "Whatever other faults may have been laid to his account, no one has ever charged him with the defect which was imputed to the church of the Laodiceans. Whichever view he espoused in any controverted question, he was wont to espouse it heartily." Judge Parker did not intentionally provoke a contest. But when his own conduct or his cherished views were attacked, he never shrank from battle.

[1] See his "The True Issue and the Duty of the Whigs," p. 92. Camb. 1856.
[2] S. F. Batchelder, *op. cit.*

He neither asked nor gave quarter. Nor was he a respecter of persons, as some of his clerical opponents had reason to know.

Parker is described by Everett P. Wheeler as "a man with strong features and keen black eyes." "To see him at his best," says another old graduate, "one should have enjoyed his hospitality. He was never so much at home as when entertaining in his charming house a few members of the school. I can see him now holding to his critical and appreciative eye his Rhine wine in its Bohemian or Venetian glass." [1]

"In appearance and character Parker was a type of the best of the New England country gentlemen of his day. He was of so dignified and commanding a figure that a stranger, even passing him on the street, instinctively felt the presence of a great man. His portrait in the Law School, like those of Parsons and Washburn, is vouched for by men who sat under him as an excellent likeness. He was of high breeding, constant hospitality, strong religious convictions, and sometimes confessed in private to a passionate love for the British poets. He was a man of inflexible integrity, and a blunt, outspoken sincerity rivalling that of President Lord, of Dartmouth College fame, to whom it is said he once exclaimed, in the heat of an argument, 'Sir, this modern education is all a humbug,' and who instantly replied, with great heartiness, 'Judge Parker, I know it is.'" [2]

PARSONS, THEOPHILUS, was born in Newburyport, Massachusetts, on May 17, 1797, the son of Theophilus Parsons and Elizabeth (Greenleaf) Parsons. The father was the most eminent lawyer of his day in Massachusetts, Chief Justice of the Supreme Judicial Court from 1806 until his death in 1813, distinguished not only for his mastery of his profession, being often called "the giant of the law," but also for his attainments in other branches of learning.

The younger Parsons moved with his family to Boston, and was there prepared for Harvard College, from which he was graduated in 1815. He studied law under William Prescott, the father of the historian, and was admitted to the Bar in 1819. Thereafter he travelled in Europe and on his return began practice in Taunton, Massachusetts, from which he soon moved to Boston. He became known chiefly as an admiralty and marine insurance lawyer, but his professional engagements did not preclude some literary and journalistic activity. For a time he edited the United States Free Press. He married Catherine Amory Chandler in

[1] S. Arthur Bent, *Personal Recollections*, 47 N. Eng. Mag. 244. 1912.

[2] S. F. Batchelder, *op. cit.*

1823, and had three sons and four daughters. All his children survived him with the exception of one son. He daily left his Brookline house so early and returned so late that he had hardly any home or family life at all; and he used to tell how his young son one day inquired, "Mother, who is that nice gentleman that sometimes spends Sundays here, and seems so fond of me?"

In 1848, on the resignation of Professor Greenleaf, Parsons was chosen Dane Professor of Law, and the career for which he is chiefly remembered thus began when he had passed his fiftieth year. He doubtless owed his election as much, or more, to his personality as to his legal attainments. He was an effective speaker, lively and engaging in conversation, full of anecdote and allusion.

During the early years of his professorship there is no doubt of the success of his teaching. He had as his principal colleagues Judge Joel Parker and Emory Washburn: the one a man of profound learning, which he devoted earnestly to the School; the other, one of the most attractive personalities of his time. But Parsons was the favorite professor, if we may judge from the statements of some of his most distinguished students.

Joseph H. Choate says of him: "Of all the professors, he was the most valuable to me." And also: "He was one of the most charming and delightful of men. It was his maxim of life — that it was the duty of every lawyer to get all the entertainment possible out of his work as he went along; and whether in his lectures, in social converse, in court, wherever he was, he had a most delightful way of saying things. Even while uttering the foundation principles of the Common Law, he impressed them upon the minds of his hearers in a way that I, for one, have succeeded in carrying always through a long professional career."

Judge Oliver Wendell Holmes says of him that he was "almost if not quite, a man of genius and gifted with a power of impressive statement which I do not know that I have ever seen equalled." Tributes such as these cannot be gainsaid.

He was just the reverse of Joel Parker in personal appearance, says Everett P. Wheeler. "He was a large man, with somewhat swelling and ruddy cheeks, which spoke of good living, and a merry laughing eye that inspired every beholder with good humor. No one could tell a story better and no one could illuminate a law lecture with more delightful variety of anecdote and illustrations. Every year he gave a practical lecture on legal ethics in the conduct of the profession. He cautioned us against extrava-

gant expectations, and told us that if a young lawyer paid for his sign the first year and his office rent the next, he did very well. . . . I learned in the Law School from all three professors that the object of law was to do justice. Parsons' sonorous voice in his annual lecture rolled out with great delight the Latin phrase: Saepe pro clientibus; pro lege, pro republica semper." [1]

One of Parsons' annual stories has fortunately been preserved for us by S. Arthur Bent, of the class of 1865. Parsons had roomed in college with a nephew of John Randolph of Roanoke, who counted Pocahontas among his ancestors. One vacation he and his roommate went to visit Randolph in Washington. "During a large dinner party, Parsons being at the foot of the table, the eccentric statesman pointed a long and attenuated finger in the student's direction, and with his shrill and penetrating voice, fixed the gaze of all his guests upon him, saying: 'Mr. Parsons, are you descended from William Parsons, who was hanged in England for murder?' To which the youth, unabashed, replied, 'Mr. Randolph, I am descended from neither an American nor an English savage.' I remember the applause which the School then and doubtless every year gave to this audacious reply." [2]

Parsons was not long connected with the School before he followed the example of his predecessors and made large contributions to legal literature. He also published a memoir of his father in 1859, which contains much valuable information in regard to the legal history of Massachusetts. His legal works, though not in all respects satisfying critical legal judgment of the present day, became standard as soon as published, and most of them went through several editions. The pecuniary returns were considerable, and bore witness to the esteem in which the books were held. Mr. Brandeis tells of a Kentucky law-student who found Parsons on Contracts relied upon by the courts of that State so constantly, that he inquired whether there was any statute making it an authority.

The latter half of Parson's professorship was passed during the exciting years of the Civil War, and the events immediately before and after. He took an active part in the discussions of the time, and supported to the fullest extent the so-called war powers of the government as constitutional. In this he differed from his colleague Judge Parker, who, though no less ardent a

[1] Everett P. Wheeler. The Harvard Law School in 1857, 13 City College Q. 154. (1917.)

[2] S. Arthur Bent, *Personal Recollections*. 47 N. Eng. Mag. 244. (1912.)

supporter of the Union, was opposed to some of the powers which the Government assumed to meet the rebellion of the Confederate States. Whatever may have been the technical merit of Parker's contentions, local opinion doubtless supported Parsons.

By the time that President Eliot succeeded to the Presidency of Harvard College, the professors in the Law School were elderly men. Parker had indeed resigned, but his successor, Judge Nathaniel Holmes, was past middle life and new to the work of the School. Washburn was in his seventieth year, and Parsons was past seventy. It was not strange that younger men felt that improvement could be made by a change in methods. Parsons, feeling that he was too old to take part in a new régime, tendered his resignation in 1870, and it was accepted.

After his resignation Parsons continued to live in Cambridge, busying himself with literary work. He saw much of the law students and retained his old popularity. New editions of his legal treatises were called for, and furnished an abundant field for his activity. He was, moreover, interested in other things besides law, and had written in earlier life and continued in later life to write on miscellaneous and religious subjects. He was an early convert to the Swedenborgian faith, and active in the affairs of that church. He published, besides his legal works, a volume of essays in 1845; The Law of Conscience, 1853; Deus Homo, 1867; The Infinite and Finite, 1872; Outlines of the Religion and Philosophy of Swedenborg, 1875.

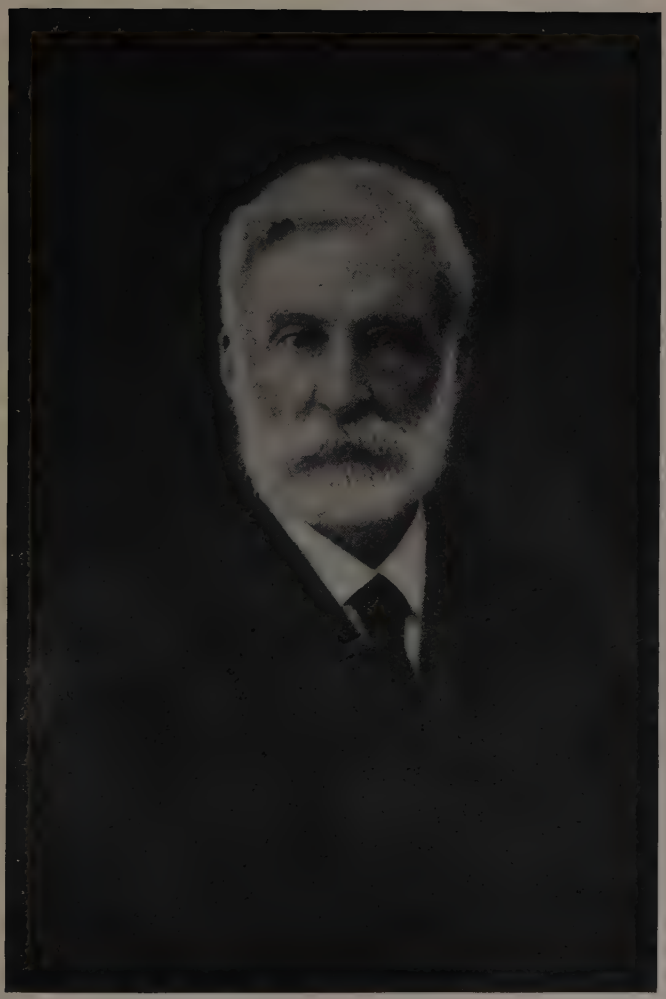
He died in Cambridge on January 26, 1882, in the eighty-fifth year of his age.

PEABODY, WILLIAM RODMAN, A.B. 1895, LL.B. 1898, taught Criminal Law, 1900–04. He is in practice in Boston, and has been representative from Cambridge in the Massachusetts legislature.

ROBERTS, ODIN BARNES, A.B. 1886, A.M. 1891, LL.B. 1891, S.B. (Massachusetts Institute of Technology) 1888, has practised law in Boston since leaving the School, specializing in patent, trade-mark, and copyright cases. He has been Lecturer on Patents in alternate years since 1912.

ROUNDS, ARTHUR CHARLES, A.B. (Amherst College) 1887, A.M., LL.B. (Harvard) 1890, a member of the New York Bar, was Lecturer on the New York Code, 1898–99, 1900–01, 1902–03.

RUBLEE, GEORGE, A.B. 1890; LL.B. 1895, was Instructor in Contracts for the last part of the year 1895–96. He practised in



Jeremiah Smith

LIBRARY OF
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DALLAS, TEXAS

Chicago for a year and since then in New York City. On March 5, 1915, he was appointed by President Wilson as Chairman of the Federal Trade Commission, but owing to the opposition of his political enemies, the appointment was not confirmed by the Senate. He is now representative from the United States at the Allied Shipping Conference in London.

SCHAUB, LINCOLN FREDERICK, A.B. 1904, LL.B. 1906, entered practice in Boston. He taught Quasi-contracts in the Law School six times between 1907 and 1913, and Persons, twice. In 1913 he became Professor of Commercial Law in the Graduate School of Business Administration of Harvard University.

SCHOFIELD, WILLIAM, A.B. 1879, LL.B. 1883, was secretary to Justice Gray of the United States Supreme Court for a year after graduation. He then entered practice in Boston. He was Instructor in Torts at the Law School for four years, from 1886 to 1890. From 1889 to 1902 he was a member of the Massachusetts House of Representatives. In 1903 he became Associate Justice of the Superior Court of the State, and in 1911 was appointed United States Circuit Judge for the First Circuit. He was taken ill a few days after this appointment and died in Malden, Massachusetts, June 10, 1912.

SEAVEY, WARREN ABNER, A.B. 1902; LL.B. 1904, practised in Boston until 1906. He was then appointed Professor of Law in the Imperial Pei Yang University, Tientsin, China, acting as head of the Law School from 1906 to 1911. He was Lecturer on Pleading at Harvard Law School in 1911–12. For the two following years he was Professor of Law at Oklahoma State University, and from 1914 to 1916 at Tulane University. In 1916 he became Professor of Law at the University of Indiana. He is now in military service.

SMITH, JEREMIAH, was born in Exeter, N.H., July 14, 1837. His father, Chief Justice Jeremiah Smith, fought in the Revolution, so that Judge Smith is one of the last actual sons of the Revolution. He graduated from Harvard College in 1856, obtained an A.M. in 1859, and studied at the Law School, 1860–61. He practised law in Dover, N.H., until 1867, when he became Justice of the Supreme Court of New Hampshire. He resigned in 1874 on account of ill health, and resumed practice in 1882. On March 31, 1890, he was appointed Story Professor of Law at Harvard Law School, where he taught until

June, 1910. His subjects were Torts, Agency, Corporations and, Persons.

He compiled several case-books, with unusual sagacity in finding significant cases, and wrote many articles, especially on the law of labor unions and on causation, that fascinating borderland between law and metaphysics. In class, he laid great emphasis on careful statement of the facts of cases, a valuable habit which is sometimes uncultivated by lawyers. Precise and thorough as he was in his definition of legal rights and duties, Judge Smith had little respect for the man who always insists on those legal rights and will not do more than the law requires. It was his wont each year, after showing how few positive acts were demanded by the law, to recommend the students to read the last part of the twenty-fifth chapter of Matthew, and thus call to mind the obligations above and beyond law.

In 1910 Judge Smith resigned on account of advancing years, but has continued to write and is constantly in the Law School Library, "getting to work and learning the law all over again."

Although the students are no longer able to learn from him, his colleagues are still fortunate in the opportunity to do so.

SMITH, JEREMIAH, JR., A.B. 1892, LL.B. 1895, son of the above, was secretary to Justice Gray of the United States Supreme Court for a year after his graduation. He then entered practice in Boston. He was appointed Lecturer on Massachusetts Practice for 1905–06 and 1907–08.

SPRAGUE, RUFUS WILLIAM, A.B. 1896, LL.B. 1900, a member of the New York Bar, was Lecturer on New York Practice in 1903 and again in 1905.

STACKPOLE, JOSEPH LEWIS, A.B. 1895, LL.B. 1898, one of the leading patent lawyers in Boston, taught that subject at the School 1901–02, 1906–07, 1909–10.

STEARNS, ASAHEL, was of the sixth generation of the descendants of Isaac Stearns, who came to America in 1630, and became the ancestor of all the families in New England bearing his name. Asahel, the son of Honorable Josiah Stearns of Lunenburg, Massachusetts, was born June 17, 1774; was graduated from Harvard College in 1797, married in 1800 Frances Wentworth Shepard, widow of Daniel Shepard of Amherst, New Hampshire, and settled after his marriage in Chelmsford, Massachusetts. Young Stearns practised law in Chelmsford until 1815, when he

moved to Charlestown, and in 1815–16 represented the Middlesex district in the National Congress. Shortly after the completion of his term as Congressional Representative, he was appointed University Professor of Law in furtherance of the plan drawn up by Chief Justice Parker for establishing a Law School in Cambridge.

Stearns accepted his appointment with diffidence, stating that he had much reason to fear that he should be unable to fulfil the just expectations of those interested. He nevertheless drew up rules for the new School and endeavored to carry out, as best he could, plans for its work. He moved to Cambridge in 1818, and in 1822, or thereabouts, built the house which at that time, and for many years thereafter, stood on Kirkland Street, then named Professors' Row, but was afterwards removed to Oxford Street and called "The Foxcroft." [1] Here he spent the remainder of his life. In 1824 he published his book on Real Actions, one of the notable early American law books, which was doubtless in the main a by-product of his teaching.

The time of the foundation of the new Law School seems not to have been very favorable, and the number of students diminished rather than increased as years went by. In 1829 Stearns resigned his position, and his resignation was accepted. It seems probable that the expense of life at Harvard, the lack of a proper building for the School, prejudice outside of New England against the Unitarianism prevalent at Harvard, the disturbed conditions of business, and the rise of other law schools, together with the confirmed habit of preparation for the profession by study in an office, were more responsible for the lack of success of the School than any fault of its early professors.

Besides the work of his professorship, Stearns was engaged in other public and business activities. He was District Attorney for Middlesex County from 1813 until 1832. In 1823, with Lemuel Shaw as fellow Commissioner and Theron Metcalf as editor, he published a revision of the laws of Massachusetts from 1798 to 1821; and was also a member of the commission which compiled the General Statues of 1836, the notes to which are still of great value. He was a member of the first board of directors of the Cambridge bank (later the Cambridgeport National Bank and now the Central Trust Company), which was incorporated in 1826. He was also one of the incorporators of the Charles

[1] It was injured by fire in January, 1918, while occupied as a dormitory by students of the U. S. Naval Radio School.

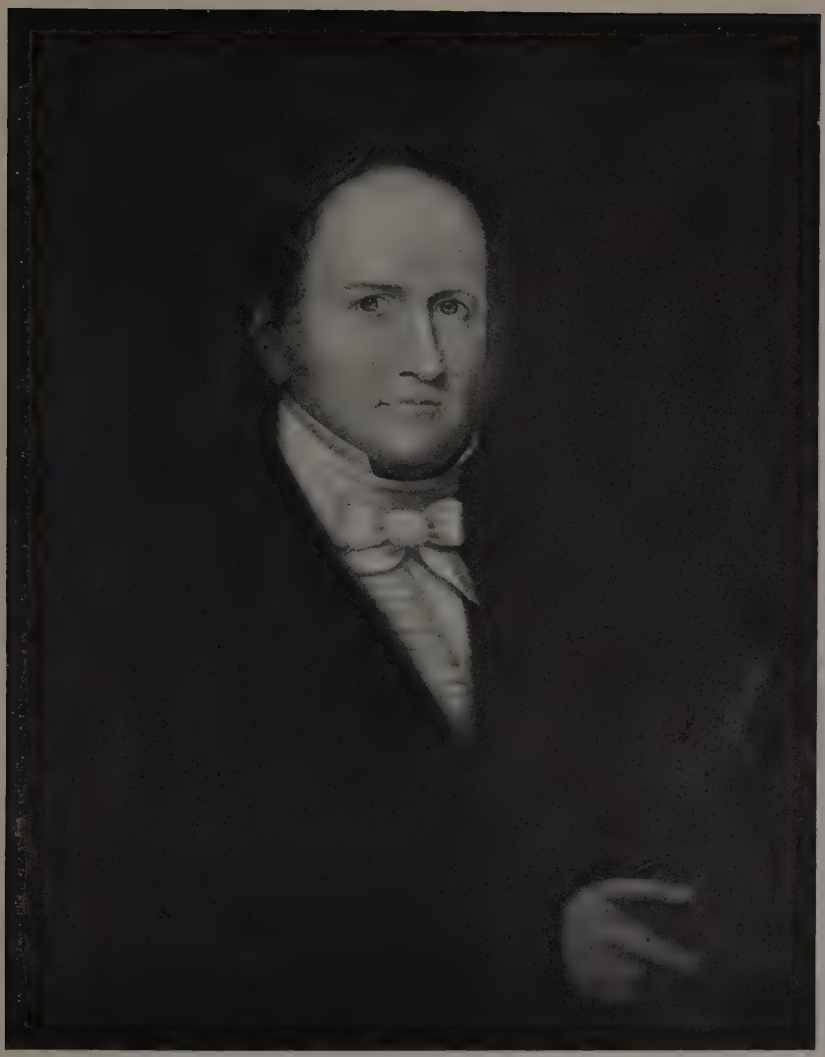
River Bank, and in 1835 was President of the Cambridge Institution for Savings. In 1830–31 he was state senator. In 1833 he was Treasurer of the Society for Propagating the Gospel among the Indians of North America. He died in 1839.

In personal appearance he was tall, with regular features. The portrait by Harding now in the possession of the Harvard Law School was considered a good likeness. He was a man of grave demeanor, but with a sense of humor, and was a favorite in society. He was interested in the public charities of his time and held a high place in the esteem of the community. His family life was happy. One daughter and one son grew to maturity; the latter, William Gordon Stearns, survived until 1872, and was Bursar of Harvard College from 1844 until 1870.

Luther Stearns Cushing, (*q. v.*) Judge of the Massachusetts Court of Common Pleas, reporter of decisions, and author of Cushing's Manual; Edmund Cushing, Chief Justice of the highest court of New Hampshire; Oliver Stearns, Dean of the Harvard Divinity School, were nephews of Asahel Stearns.

STORROW, JAMES JACKSON, A.B. 1885, LL.B. 1888, entered practice in Boston, specializing in Patent Law. He was Lecturer on that subject in 1899. He has subsequently become a partner in one of the largest banking houses in Boston, and has been prominent in public affairs. In 1917 he was appointed Fuel Commissioner for New England.

STORY, JOSEPH, son of Elisha and Mehitable (Pedrick) Story, was born at Marblehead, Massachusetts, September 18, 1779. Dr. Elisha Story was an ardent Whig, was one of the "Indians" who destroyed the tea in Boston harbor, and was a surgeon in the Continental army during the Revolution. Joseph was educated at Harvard College, graduating in 1798, studied law at Salem in the office of Samuel Sewall, afterwards Chief Justice of Massachusetts, and later in the office of Samuel Putnam, afterwards judge of the Supreme Court of the state. He was admitted to the bar in 1801. At first he turned his energies largely toward politics and was conspicuous as a radical follower of Jefferson in a time of bitter political feeling and in a conservative Federalist community in which the people of wealth and culture looked upon radical Jeffersonians with distrust. But although tabooed in society and by his professional brethren because of his dangerous notions, his zeal, industry, and ability made themselves felt both at the bar and in politics. In a few years he had thoroughly



ASAHEL STEARNS

University Professor of Law, 1817–1829

(From the portrait by Chester Harding in the possession of the School.)

established himself in his profession and soon reached a leading position. Meanwhile (1803) he had declined an appointment by Jefferson as Naval Officer of the Port of Salem, had sat in the Massachusetts Legislature from 1805 to 1808 and again from 1810 to 1811, had been Speaker for two terms, and had sat in Congress (1808–1810). Thus before he was thirty he had gone a long way in a political career, and but for his appointment to the bench at the early age of thirty-two he might well have been known as one of the great statesmen of the formative period of our political institutions.

In 1811, while Speaker of the Massachusetts House of Representatives, he was appointed Justice of the Supreme Court of the United States. The bar did not take well to the appointment and although some had pronounced him "worthy the civil attention of the most respectable Federalists," others denounced the elevation of "Joe Story, that country pettifogger, aged thirty-two," to the bench of our highest court.

Judge Story left his mark upon American law in three ways: as a judge, as a writer, and as a teacher, and in each capacity his work was enduring and fruitful. As a judge he has always been ranked with Marshall and Kent among the makers of our legal system. Gibson and Shaw and Ruffin and more recently Doe, who to some extent may claim a place among the builders of American law, had each far less influence and chiefly a local influence. Marshall, Kent, and Story affected our law as a whole. They each had a national influence and to some extent a universal influence. But Marshall's work was done substantially in one field, that of public law, though he made that field almost wholly his own. Kent's judicial service was shorter than Story's, his jurisdiction was much more limited, and he was in a position of less authority. Indeed Story came to the bench at an opportune time. American constitutional law was still formative, and he sat with Marshall in the great days when it was established that we have a constitution of cans as well as of can'ts. He was appointed just before the outbreak of the War of 1812, and his reported decisions in a circuit where admiralty and maritime litigation was rife, and in the Supreme Court when the war was constantly raising questions of prize law, of international law, and of admiralty, were a chief factor in establishing American law upon these subjects and were often of international importance, since he began his judicial career at a time when Lord Stowell's work was but half accomplished. Moreover, the reception of the

common law of England and the moulding of it into a common law for America had only fairly begun. The fixation and systematization of equity was still incomplete and it was necessary to settle what it was as well as to receive it and adapt it to the circumstances of the new world. For when Story was appointed Eldon had still two-thirds of his long reign in the court of Chancery before him, and Kent was not yet Chancellor. And not the least in importance, the development and reception of the law merchant was still going forward. Story's active mind, unremitting industry, and restless interest in law made him a natural leader in these fields and put him with Marshall and Kent.

Marshall influenced the development of our law only from the bench by judicial decision. Kent influenced our legal development in three ways: as a judge by decisions, as a writer by his great institutional treatise, and as a teacher. Story also influenced our legal development as a judge, as a writer, and as a teacher. But as a writer Story was incomparably more active and prolific than was Kent, and his opportunities as a teacher were far greater. It has been said of him: "In truth Story's position in the history of American law is unique. He was the colleague of Marshall in the great days and wrote the opinion of the court in some of the cases that made our constitutional law. He survived Marshall fourteen years and stood for the old court among a newer generation to whom men looked vainly to undo its work. After Kent he was the pioneer among our great text writers. And while Kent went no further than an institutional book, the latter was scarcely more than complete when Story began a series of treatises which were to cover the great fields of Conflict of Laws, Constitutional Law, Equity and Commercial Law, often with the pioneer work in English, and always in such wise as to long furnish the model for those who came after him. Moreover Kent's lectures at Columbia were a bagatelle compared with Story's service of sixteen years at the head of an established law school . . . to which his fame as a judge and as a writer and his zeal as a teacher gave an unquestioned primacy. Such an opportunity of judging, writing and teaching at a critical period in the history of a legal system has fallen to the lot of very few. It is not too much to compare him, in this respect, with the great Roman jurists of the third century, with the great doctors of the revival of Roman law, with Pothier and with Savigny. In our own law perhaps no one but Coke has had an equal opportunity."

Judge Story's writings were part of the fruits of his teaching.

In Dane's letter founding the Dane Professorship, he stipulated that it should be one of the duties of the Dane Professor "to prepare and deliver, and to revise for publication, a course of lectures on the five following branches of law and equity, equally in force in all parts of our Federal Republic, namely: the law of nature, the law of nations, commercial and maritime law, federal law and federal equity. . . ." Within three years of his appointment, the new Dane Professor published his Commentaries on the Law of Bailments (1832), and this with his Commentaries on the Law of Agency (1839), his Law of Partnership (1841), his Bills of Exchange (1843), and his Promissory Notes (1845) amply complied with the founder's requirement of published lectures on commercial law. "Federal equity," perhaps so called because of the want of a court of chancery in Massachusetts, was covered by Equity Jurisprudence (1836) and Equity Pleading (1838) which were available for state and federal systems alike, while "Federal law" was perhaps covered by the Commentaries on the Constitution (1833). He wrote nothing directly upon the law of nature and the law of nations. But his epoch-making Conflict of Laws, dealing with jurisprudence and private international law, perhaps met the spirit of the founder's scheme, even if not its letter. To have written these nine books in sixteen years would of itself have been a great achievement. His writing them while sitting at circuit and in banc in the Supreme Court of the United States, and teaching in the intervals of judicial work, even allowing for the less volume of judicial business and the relatively small student body, was abundant fulfilment of Dane's prophecy to the President of the University when the appointment was under discussion. Not unnaturally, President Quincy doubted whether it was possible for Judge Story to "fill out that extensive outline." Dane replied: "He will do this and more; for uncommon as are his talents, his industry is still more extraordinary."

It has been said that "In quantity, in timeliness, and in its relation to the law that went before and came after, this body of legal writing is in many ways comparable to that of Coke. In each case the judge-made law of the past was restated and was made conveniently and, as it were, authoritatively available for the future. If in each case there is much to criticise in the details of the performance, the answer is, after all, that this body of writing must be judged as a whole and must be appraised by its results. So judged, it must be counted one of the controlling factors in the shaping of American law." As Coke summed up

English legal development prior to the seventeenth century and furnished a basis for a new start, so Story summed up English case law of the seventeenth and eighteenth centuries and made it available as the basis of a new start in America.

As has been related heretofore in this volume, Judge Story was elected Dane Professor of Law on June 12, 1829. He died, as it were, in harness, after a brief illness, on September 10, 1845. Before his death he had definitely determined to retire from the court and to devote the remainder of his life to his professorship of law.

We have abundant authentic accounts of Story as a teacher. He was clearly not a teacher in the ordinary sense. Nor was he a teacher of the Socratic type who teaches not thoughts, but how to think. Yet his teaching is in the right line of descent of our teaching to-day in that he sought more to make lawyers than to expound dogmatic law. His lectures have been described as "sprightly and interesting discourses," as "more conversation than lecture," as full of digressions that were often eloquent. The real value was in bringing the students into intimate contact with a great lawyer and a great personality. This was the more effective in making lawyers of his students because of the earnestness with which he devoted himself to the work of the school. An instance recorded in a letter of R. H. Dana to W. W. Story and published in the latter's "Life and Letters of Joseph Story," is typical: "To compel a recitation on Saturday afternoon," Dana wrote, "would have caused a rebellion. If a moot court had been forced upon the law school, no one would have attended. At the close of a term there was one more case than there was an afternoon to hear it in, unless we took Saturday. The counsel were anxious to argue it but unwilling to resort to that extreme measure. Your father said — 'Gentlemen, the only time we can hear this case is Saturday afternoon. This is *dies non*, and no one is obliged or expected to attend. I am to hold court in Boston until two o'clock. I will ride directly out, take a hasty dinner and be here by three o'clock and hear the case, if you are willing.' He looked round the school for a reply. We felt ashamed in our own business, where we were alone interested, to be outdone in zeal and labor by this aged and distinguished man, to whom the case was but child's play, a tale twice told, and who was himself pressed down by almost incredible labors. The proposal was unanimously accepted. Your father was on the spot at the hour, the school was never more full, and he sat until late in the evening."

In such devotion to the teaching work of the school on the part of the world-famous judge and writer who was at its head is the germ of the atmosphere of study in the Law School of to-day, "a phenomenon," says a foreign observer, "which has not its like in the most remote degree anywhere else in the world."

STROBEL, EDWARD HENRY, was born at Charleston, S.C., December 7, 1855, and died at Bangkok, Siam, January 15, 1908.

In the bequest by which he founded the Bemis Professorship of International Law, the late George Bemis expressed the desire that the jurist who should occupy the chair should be "not merely a professor of the science, but a practical co-operator in the work of advancing knowledge and good-will among nations and governments. For that object I should prefer, if practicable, that the incumbent should have had some official connection with public or diplomatic life, or at least have had an opportunity, by foreign travel or residence, to look at the United States from a foreign point of view, and so to estimate it as only one of the family of nations."

It would have been difficult for the Corporation of Harvard College to have selected a man better fitted to comply with the letter and spirit of the bequest than Edward Henry Strobel, the first incumbent of the chair.

A native of South Carolina, he graduated from Harvard College in the class of 1877 — a class which numbered many brilliant men. He did not take his LL.B. at the Harvard Law School until 1882. After a short period of practice in New York City, he turned to public life. In 1885 President Cleveland appointed him Secretary of Legation at Madrid. During about a third of the time (five years) which he spent in Spain, he was Chargé d'Affaires. In 1888 he was sent on a special mission to Morocco. On the change of administration he tendered his resignation, but he was retained in office until 1890. In 1893 President Cleveland appointed him Third Assistant Secretary of State. A year later he became Minister to Ecuador, and shortly thereafter he was made Minister to Chile, where he remained until 1897. He also had the distinction of acting as sole arbiter in a dispute between France and Chile.

When, in the fall of 1898, he began teaching in Harvard College and in the Law School, he had therefore had long official connection with both public and diplomatic life.

At the Law School Strobel gave a course on International Law

as administered by the Courts and a half-course on Admiralty. At the same time he offered a full course in the College for advanced students on International Law. He also appeared in 1899 as special counsel for Chile before the United States and Chilean Claims Commission in Washington, and for several winters lectured before the School of Comparative Jurisprudence and Diplomacy at the Columbian University on French and Spanish Law.

His classes in the College were large and testified to the esteem in which he was held as a teacher. International Law is not a subject calculated to attract many students in the Law School; but his instruction drew together larger classes than usual. Its nature may be illustrated by the remark of one of his colleagues who sat with him on oral examinations of candidates for the Ph.D. degree. He said: "Strobel asks such interesting questions on these occasions that when the examination is over, I always feel like going to the library to work out the answers to them."

Successful as he was in his professorial duties, these did not afford the best field for the display of his abilities. The study of theories and principles as such was not congenial to his temperament. He was inclined to consider himself rather as "a practical man." After a few years in the chair there came to him a call which attracted and moved him. He was offered the post of General Adviser to His Siamese Majesty's Government, in succession to the late Monsieur Rolin-Jaequemyns. The duties of the General Adviser are primarily connected with the foreign affairs of the Kingdom, though they are by no means limited thereto. The period of Strobel's appointment was a critical one in the history of Siam, and he was the one man fitted to deal with the problems which had arisen. He was granted leave of absence from the University in 1903, and the leave was extended until he resigned in 1906. Even before arriving in the Far East he carried to a successful issue an important negotiation between Siam and France. From the moment he reached Bangkok he exercised an influence which grew steadily. The post he held is one which has no parallel in any other land. In order to accomplish anything of permanent value, the incumbent must be far-sighted, clear in thought and statement, able to persuade others, and willing to assume unlimited responsibilities. These are qualities which Strobel possessed in high degree, and they were speedily recognized and appreciated by the government he served.

EDWARD HENRY STROBEL

Bemis Professor of International Law, 1898–1906. General Adviser to the King of Siam, 1906–1908

Before his engagement, Siam had entered upon a stage of mutual distrust in her relations with other powers. Failure of nations to understand each other, and the sense of distrust which grows out of that failure, is the source of the larger part of international unhappiness. A certain kind of peace may, perhaps, be imposed among nations by the exercise of force, but unless peace is based on a clear mutual understanding, it has no sure foundation. Strobel lived long enough to see such a foundation laid for improved relations between Siam and the powers with which she stood in treaty relations. He was called away in the midst of the labors he loved so well; but his name will be remembered as long as Siam remains a state. Much has been written and great differences of opinion have been expressed as to the place to which Europeans may attain in the esteem and affection of Eastern peoples. Whatever doubt there may be as to others, there can be no difference of view as to the position which Strobel holds in the hearts of the Siamese. He possessed an attractive personality; he was endowed with qualities that particularly fitted him for the tasks of his post; he had a deep sympathy with the aspirations of the Siamese people; and he was wholly devoted to his work. With all this, he could not fail to attain to a position reached by few, if any, other Europeans in the Far East, and his premature death was felt not only as a blow to the state, but as a personal loss by all with whom he had come in contact.

SUMNER, CHARLES, A.B. 1830, LL.B. 1834, was born in Boston January 6, 1811. He entered the Law School in 1831 "with a cartload of resolves" to "study law hard but study polite letters as hard." "There was scarcely a textbook in the Library, of the contents of which he had not some knowledge. . . . His room was piled with books; the shelves overflowed and the floor was littered with them." He read twice as much law as any one else and four times as much that was not law. He was student librarian for two years, and in 1833 compiled and saw through the press the first printed catalogue, declining to charge anything for this labor. He was a close personal friend of Ashmun and of Story, whose decisions in the First Circuit he began to report while still a member of the School.

In January, 1835, he was appointed an Instructor to assist Greenleaf during Story's absence in Washington. He also opened an office in Boston, where Story and Greenleaf were frequent callers. Indeed, Greenleaf, still in active practice, deposited his

writing desk, table and chair in the room, calling it "our office." In 1836 Sumner again substituted for Story.

In December, 1837, he sailed for Europe with letters of introduction from Story. Here he had a remarkable social success, astonishing a judge who had invited him to a seat on the bench by his ready citation of authorities on a point in the litigation (which he had luckily argued in a moot court case at the Law School), meeting every one worth while, riding to hounds, but impressing Carlyle as "the most completely nothin' of a mon that ever crossed my threshold." In May, 1840, he arrived back in Boston, carrying in his hand some exchequer tallies which he deposited in Dane Hall together with Brougham's Lord Chancellor's wig. Soon after his return he reluctantly served for a few weeks as instructor. He also taught for short periods in 1843 and 1846. He is said by Judge David Cross to have been a ready and agreeable talker at his lectures, but confined himself to the given pages in the textbook, not questioning the students much or compelling them by his method to hard and close study of the lesson. Out of the classroom he was agreeable and companionable.

Judge Story desired that Sumner should succeed him; and Professor Kent, upon his resignation after a year's service, expressed the same wish. If he had been appointed, the experiment tried thirty years later, when Ames, fresh from the School, was made an Assistant Professor, would have been made earlier and under less favorable circumstances; for Sumner's mind was not quite fitted for teaching. Whether because of his youth and his radical "idiosyncrasies of opinion," or on the ground that his moderate success as a teacher did not justify a permanent position, the Corporation, somewhat to his disappointment, failed to designate him as professor. He might perhaps have declined; but it is probably fortunate for the country which he served so well that he was not asked.

When Sumner became outspoken in his Abolitionist views, almost every door in Boston and Cambridge was closed to him, except those of Dana and Longfellow. This sudden change had no effect upon him.

On April 24, 1851, Sumner was unexpectedly chosen United States Senator by a coalition of Democrats and Free Soilers in the Massachusetts Legislature, and at once became the leader of the anti-slavery party in Congress. An attack upon him by a South Carolinian, Preston S. Brooks, nearly caused his death;

but he returned to his duties after a few months. He became, as Chairman of the Committee on Foreign Affairs, one of the most important men in the Senate. His strong personality, with a full sense of his own intellectual power and a tendency to depreciate that of others, made his life less successful than his talents promised. He died in Washington, March 11, 1874. A statue of him has been placed, appropriately, midway beween Dane and Austin Halls.[1]

SWAYZE, FRANCIS JOSEPH, A.B., 1879; A.M., 1880, studied at Harvard Law School, 1880–81, and practised law in Newton and Newark, New Jersey, until 1901 when he became a Circuit Judge. Since 1903 he has been Associate Justice of the Supreme Court of New Jersey. In the spring of 1917 he taught the course in Legal Ethics which had just been started in Harvard Law School.

SWIFT, HENRY WALTON, A.B. 1871, LL.B. 1874, was Lecturer on Sales, 1898–99, in Mr. Williston's absence. He is a member of the Boston Bar and since January 1, 1901, has been Reporter of Decisions in the Supreme Judicial Court of Massachusetts.

THAYER, EZRA RIPLEY, A.B. 1888, LL.B. 1891, LL.D. (Brown University) 1912, third Dean of the Harvard Law School, was born in Milton, Massachusetts, on February 21, 1866. His father was James Bradley Thayer, then engaged in the practice of law in Boston. His mother, Sophia Bradford Ripley, was the daughter of the Reverend Samuel Ripley of Concord, and a cousin of Ralph Waldo Emerson. On his father's side, Thayer was descended from John Alden, on his mother's, from Governor Bradford.

To his father, Thayer owed in a large measure his keen sense of humor, his soundness of judgment, which prevented his quickness and brilliancy from carrying him off his feet, and his capacity to deal with a legal proposition in a lawyerlike way. To what extent humor, judgment, and legal ability can be inherited nobody knows, but they can surely be developed by close and prolonged association with a man who possesses them. Thayer's association with his father was unusually close and lasted for over thirty years. They were most congenial. Though very different, each understood, admired, and loved the other, and

[1] See Warren, History of the Harvard Law School, *passim;* Memoir and Letters of Charles Sumner, Edw. L. Pierce, Vol. I.; Charles Sumner, Gamaliel Bradford. 5 Yale Rev. 541. (1916.)

they not only lived under the same roof till Thayer's marriage in 1898, but up to the elder Thayer's death, in 1902, they worked and played together, discussing one another's legal problems and every other subject which happened to interest either.[1] The union was not dissolved by death. The father's name constantly rose to the son's lips. When the never before printed "Year-books of Richard II" was brought to him from the press, his first remark was, "How happy this would have made my father." He chose to teach Evidence, the elder Thayer's leading subject, and was anxious through his own work and that of his pupils to complete what his father had left half done.

Soon after James B. Thayer accepted a professorship in the Harvard Law School in 1874, he moved with his family to Cambridge, where his son studied in the public schools and in Hopkinson's School for Boys. While preparing for college he spent a year in Athens with Professor Goodwin, studying the Greek classics, which throughout his life he read with pleasure. Entering Harvard College in 1884, he maintained his position as the first student in his class, but also played on his class nine, developed a game of tennis only just inferior to the best, and was an active member of many college societies.

When he left college in 1889, he entered a world free from the strain of the Civil War and of his own last years. "There was," he said on the twenty-fifth anniversary of his graduation, "no outward and visible call to service and self-sacrifice. We sat in the promised land which flowed with freedom's honey and milk. Just ahead of us were years when the national conscience did not seem very insistent to disturb the body politic, but slumbered or perhaps drowsed in material prosperity." But Thayer, though all things had come to him so fortunately, did not slacken his pace. In the Law School he worked very hard, determined to learn to think as well as to acquire information. Unlike his own students of after years he spent comparatively little time reading over lecture notes, but concentrated on the study of decisions. Even if some social engagement kept him out till after midnight, he made it a fixed rule never to go to bed until he had read the cases for next day. His marks on graduation were the highest from 1877 until the present time.

After a year spent in Washington as secretary to Justice Horace Gray of the United States Supreme Court, Thayer returned to Boston and entered the office of Warren & Brandeis.

[1] Proceedings, etc., in Memory of Ezra Ripley Thayer, p. 9.

He became a partner in the firm, subsequently formed, of Brandeis, Dunbar & Nutter, and, in 1900, of the firm of Storey, Thorndike, Palmer & Thayer.

His practical impressions of law-office work may be gathered from the advice he gave men in the School just before they left. "Establish a 'scarcity value' for yourself by developing some uncommon qualities. Carry on your own shoulders all the responsibility of a task, and finish it as far as possible before reporting to your superior. Do not run with it to him every little while. Your hardest single problem will be the adjustment of your activities to irregular demands. Do all that is asked of you when it has to be done and not when you want to do it. Always answer a letter the day it is received. Things set down on a piece of paper seem to get done. Arrive at the office before every one else. Persistency is the most important single reason for success. Be the kind that 'does it.' At the same time, avoid the dangers of persistency, which are being overhard and perhaps dishonest. Be imaginative — think about the other man's side of the case. If you do any extra legal work, do the kind that is most attractive. Do every job a little better than it needs."

Of his work as a practising lawyer one of his friends says:[1]

"The spirit of intense partisanship was distasteful to him; but within the limits of moral and intellectual integrity, his powers were unreservedly at the service of his clients. The extraordinary thoroughness with which he prepared his cases was, however, due perhaps as much to a feeling of loyalty to his own intellectual ideals as to a sense of personal obligation to those who employed him. His remarkable power of analysis, developing under experience, gave him equal effectiveness in dealing with questions of fact and of law; and in dealing with questions of law this power, combined with an exceptionally retentive memory and a rare appreciation both of the significance and the limits of the principles of the common law, gave weight to his opinions and distinction to his public arguments."

He also served on important committees of the Boston, Massachusetts, and American Bar Associations, and was a member of the special committee of the latter which drafted the national Code of Legal Ethics. He worked unceasingly for the adoption of this Code by the bar association of every State. His faithfulness in work of this sort, which he continued after he gave up active practice, was a strong inspiration to his contemporaries

[1] W. G. Thompson, in Proceedings, etc., in Memory of Ezra Ripley Thayer, p. 9.

and his students, and much work accomplished for bar associations in coming years will be due to his example.

During this period he married, in June, 1898, Ethel Randolph Clark, and three children were born to them. To his family he was devoted, and his devotion had in it nothing stern or perfunctory.

Thayer's intellectual and personal gifts so admirably fitted him for a teacher of law that more than once he had been asked to accept a professorship at Cambridge. Indeed the unusual compliment had been paid him, immediately after his graduation from the School, of an offer of a permanent position on its staff. Again, on his father's death, in 1902, the vacant professorship was offered to the son. Both offers, after careful consideration, were declined. Thayer did not think he had yet got from practice the development which it could give. For some years, however, he gave a series of lectures in the Law School on Massachusetts Practice, and later a series in the Medical School on the Relation of the Medical Profession to the Law.

In the spring of 1910, after considerable doubt and hesitation, he accepted the position left vacant by the death of Dean Ames at the head of the Law School, and assumed the duties of the position in the following autumn. He fully appreciated the difficulties he undertook in changing the character of his work in middle life, and threw himself whole-heartedly into his new work. All connection with practice was absolutely renounced, and his energy devoted unsparingly to problems of study, teaching, and administration. A few words written by him for a Class Report in 1912 show his own feeling about the magnitude of his task: "Any classmate who is disposed to try the experiment will agree with me that he never had a better chance to use the twenty-four hours in the day in his business, or to learn things, or to realize his own previous ignorance." And elsewhere he said: "Teaching law demands and deserves all that is best in a man."

Thayer realized keenly that he had become Dean of the Law School at a critical moment. "New movements, new unrests, new disturbances are about us on every hand, — reasons I dare to hope, for confidence and hope rather than for fears. May we not believe that even their sharper throes are but the birth pangs of the new life?" Consequently, he added to the Faculty men whose experience and mental characteristics fitted them for a time of reconstruction of the law. He was aware of the responsibilities imposed upon the School by the possession of its library, gave anxious consideration to its growth in relation to the income of the

School, and secured several important special collections of books. He was no less aware that the curriculum could not remain for all time as it had come down to him, and studied diligently how to improve it. His last report as Dean sums up the conclusions which he had reached. Most of all he came to see the part which law schools and in particular the Harvard Law School may play, if they will, in the period of growth upon which our law has manifestly entered. Nor was he dismayed by the difficulties involved. On the one hand he had no doubt that the school must hold fast to the work of training lawyers for the practice of their profession, to which it had been devoted heretofore. On the other hand he recognized that, without abating a jot of this, something more was demanded in an era of legal development no less rich in possibilities than that in which the school under Story's leadership was a factor in the reception of English law and the building thereon of a common law for America. With every inclination from training and environment to confine himself to the lines on which the school had developed in the past, he had the vision to see the service which the law school of to-day is called to perform and his sensitive conscience and unswerving regard for truth impelled him to heed the call. Happily his critical temper and well-reasoned firmness of purpose enabled him to avoid an over-ambitious program on the one side and an unwise narrowness on the other.

Thayer had scant opportunity to show the world his powers as a legal scholar. It has been said of him that "mentally he was always at work; always turning the subject-matter in which he was interested over and over again; never contented with any view or explanation of a problem until he had sifted and analyzed it to the very bottom; always ready to change his opinion or conclusion, however carefully formed, if a better was presented, even by one whose mental powers were much inferior to his own; and finally, never resting night or day until he had, by some means, reached a solution which was satisfactory to his own mind and which he felt would stand any test that could be applied to it."[1] He was by temperament a "wonderer," always searching for new light on every question. His opinion of important cases would change from year to year, and he delighted in talking them over with his colleagues, his students, past and present, and with practising lawyers. His lecture notes were critically revised from

[1] Charles E. Shattuck, in Proceedings, etc., in Memory of Ezra Ripley Thayer, Cambridge, 1916.

year to year. Intense conscientiousness impelled him to patient canvassing of all the authorities. He was almost morbidly anxious to be absolutely accurate and to present nothing that was not well matured. He was severely critical and consistently applied his critical powers to his own work. Accordingly he made repeated redrafts of everything that he wrote, and was unable to carry out his theory that each member of the Faculty should write one law review article a year. "After all," he said more than once, "the reputation of the School will suffer no injury from what I do not write."

It is certain, however, that teaching like his would eventually have resulted in legal writing of much value. At first he found classroom work as difficult as his father had done. Probably it was the most difficult task that he had ever faced. He worked all the summer of 1910 preparing his lectures in Evidence and Torts and then discovered, as he told one of his students the following winter, that practically nothing which he had done proved of any use. He found that teaching law was entirely different from every other kind of teaching and that only the actual experience behind the desk gave any notion of the preparation that was needed. This meant ceaseless attention to his courses during the winter in the brief periods that could be snatched from his administrative work. Little could be done during his office hours at the School, and early mornings found him at work. When showing one of his students the law library at the top of his house and its outlook over the Charles, he remarked that during that winter he had seen the sun rise over the river many times.

A year later he summed up this portion of a law teacher's task:

"The mere preparation for his classroom work will itself be a large matter. He will constantly find that what came to him from his teachers, no matter how learned and skilful they were, cannot be made vital or helpful by him until he has passed it through his own mind, and seen it for himself, in his own way. How to present it most helpfully is a problem which will bear indefinite thought and show him indefinite opportunity to improve on himself if he only try hard enough. The constant discussion which he will encourage outside the classroom with those fellow-students of the law whom it is his privilege to teach will take up much time, but time well spent for him in clearing and ordering his thought." [1]

[1] 25 H.L.R. 271.

At first Thayer's mind moved so rapidly in the classroom discussion that it was difficult for most of the men to follow him, and his anxiety to present all phases of the question was so great that the students came out of the room with their minds in a whirl. Yet afterwards, when they went for assistance to the textbooks, they found that, after all, everything there was already in their lecture notes, for Thayer neglected no source of information. And as time went on and his ideas arranged themselves more definitely, his teaching clarified. His accurate distinctions stood out more plainly. Conceptions which had been repeatedly confused by courts were rigorously separated. The arguments on each side were presented and overhauled. Exceptional attention was paid to the divergent views of several judges sitting on a case, and to dissenting opinions. No one came out of Thayer's lecture room with the notion that the only possible solution of a legal problem had been presented by the professor and all others were absurd. His own convictions grew clearer, but he was always eager that the other side should be heard. In the last year of his life one of his students remarked to a recent graduate, "Thayer will soon be the greatest teacher of them all."

His students always found that his very acute interest in questions of law for their own sake was united with a keen observation of the mechanics of practice, and they carried away such suggestions as: "Witnesses have a way of fading away on the stand. The first requisite is that the witness be understood, the next that the jury be interested. The jury like the witnesses better than they like the lawyers. When you lose a case each juryman you meet will tell you that he held out to the last minute for you against the other eleven. You cannot afford to put a witness on the stand with any liquor in him. In arguing before a court, cut down reading from opinions to almost nothing; a printed page is a veil between talker and listener."

Thayer's high professional standards were an inspiration to the men under him. Certain forms of conduct aroused him to unexpected indignation. "It is nothing less than an indecent situation," he would say, "for a lawyer to testify in a case he is trying, and then afterwards argue for the credibility of his own testimony." He insisted on absolute secrecy for a lawyer as to communications from his client — "It is very easy to grow careless about this."

Thayer's interest in the thought of the individual student was unparalleled. No teacher of his time got so many of the less able

men into the classroom discussion, or made them talk so well. Repeatedly he would remind a man of the position which he had taken a week or two before on some question and ask him how it affected his attitude toward a new problem. The students felt that Thayer valued every man's point of view and actually wanted to have it for his own sake as much as for theirs. He was never too busy to talk with a student, even in the precious minutes just before a lecture in his first year of teaching. If a difficult point was raised in the discussion he would not be satisfied to dismiss it with the answer of the moment, but would often write a long letter to the student, giving the result of his prolonged thought. And each day after class he would dictate a running account of the discussion with the various views taken by the men, followed by accounts of interviews in his office and comments on problems which needed further consideration and study.

Thayer studied a class as carefully as a trial lawyer studies a jury. He kept careful memoranda with respect to the work, the capacity and the mental characteristics of his students. To most of his colleagues the annual marking of several hundred examination books which contained four hours' written work was drudgery — necessary but painful. Thayer seized upon it as opportunity. Most of his examinations were corrected at his summer home where his children were often allowed to help him by turning back the cover of each book so that he did not see the name of the writer until after he had marked the book and written upon it a brief estimate, derived from its contents, of the writer's characteristics — such as "hard worker, but poor reasoner"; "brilliant but careless." These comments sometimes summed up a man's mind better than could be done by friends who had known him for years. The memoranda were afterwards correlated and with other data they gave the Dean a suprisingly accurate knowledge of the strength and weakness of the hundreds of young men under him. He had no patience with the brilliant idler who tried to make his brilliancy an excuse for neglecting his daily task, but for one who, though of slow comprehension, did honest work, he was ready to make all possible allowances. Though students found him a kindly Dean, he was not easily deceived. His practice at the Bar gave him a skill in cross-examination and readiness in drawing correct inferences of fact that were disconcerting to the occasional black sheep in the flock.

Not only was he intensely interested in the legal views of his students, but he welcomed their opinions in all matters connected

with the welfare of the School. One graduate says: "During the course of my education I came in contact with several heads of institutions. Without exception, until I knew Thayer, they regarded any suggestion from the students on matters of general policy as an unwelcome impertinence. Thayer, on the other hand, gave earnest consideration to suggestions which as I look back I can now see I had no business to make."

Besides always welcoming students in his office, the Dean was always at home on Sunday afternoons with Mrs. Thayer, and their living room was filled with a group of eager talkers. Once a week he made a practice of visiting the Stillman infirmary to see any law school men who were there.

His personal interest in his students did not cease with graduation. "Do not think your services as Adviser are ended," he wrote to one man. And of another he said, "When a teacher reads as pretty a piece of work as this brief of his, he gets a chance to exercise the happy faculty with which nature has endowed all teachers of appropriating to themselves credit for all the attainments of the writer, and feeling about as if they had done the whole thing themselves."

Late in 1913 Thayer received the honor of an offered appointment to the bench of the Supreme Judicial Court. It was a position for which he had hoped throughout his life of practice, and it was not easy to refuse it now. He was urged to accept the appointment by friends whose opinion he valued, and had he yielded to his personal inclination, might have done so, yet he seems to have reached an adverse decision with unexpected rapidity.

"The position was very attractive to me," he wrote to a friend shortly afterward, "not only because I have a great sentiment for our court, and it has always been my special ambition to serve on it, but also because I feel that I am a good deal better fitted both by training and natural capacity for work on the bench than for teaching. Nevertheless the question at no time seemed to me even doubtful, and my experience of four years ago, when I was asked to come to the Law School, taught me what a really doubtful question about one's career means. I could not make it seem anything less than the desertion of a simple duty to drop the School at this time, particularly in the middle of the school year. This is not the sort of turn which a managing director should serve the Institution, however it might be with others; I knew how my father would have felt

about it and I agreed with his opinion. My only doubt was whether the School really needed me. On this point I have been seriously shaken up during my moods of depression during the last few years, but when I put the question to some of my colleagues . . . they would not admit that the School would gain by my going."[1]

With this final act of renunciation the way seemed clear for a long service to the School for which Thayer had given up so much. But little more than a year of work remained. "The unending struggle to decide which of many things that call to be done shall be sacrificed to the next" wore him out. He had written of the ceaseless calls upon the law teacher, "Before he has had a chance even to consider the claims of society and his family, the problem has resolved itself into the central tragedy of life — that there are only twenty-four hours in the day." For the men he taught the tragedy is that so many days of twenty-four hours were snatched out of his life.

What stands out permanently in one's memory of him is his conscientiousness, his loyalty, his devotion to duty, his considerateness of others. Not sanguine and with little outward enthusiasm, he saw so clearly and strode in the path he saw before him so courageously as to derive from his conscience the élan which others derive from their temperament. Even a certain depression, born of his critical faculties and his sensitive conscience, was balanced by a sound sense of values and a keen sense of humor. His wit was Greek in its gracefulness and playfulness. Indeed the reading of Greek, which he kept up to the last, had left its mark upon him and one might think of him as one of the well born, well bred, well taught, widely cultured youth with whom Socrates practised his dialectic. And even as Socrates taught, he thought consistently and he lived consistently —

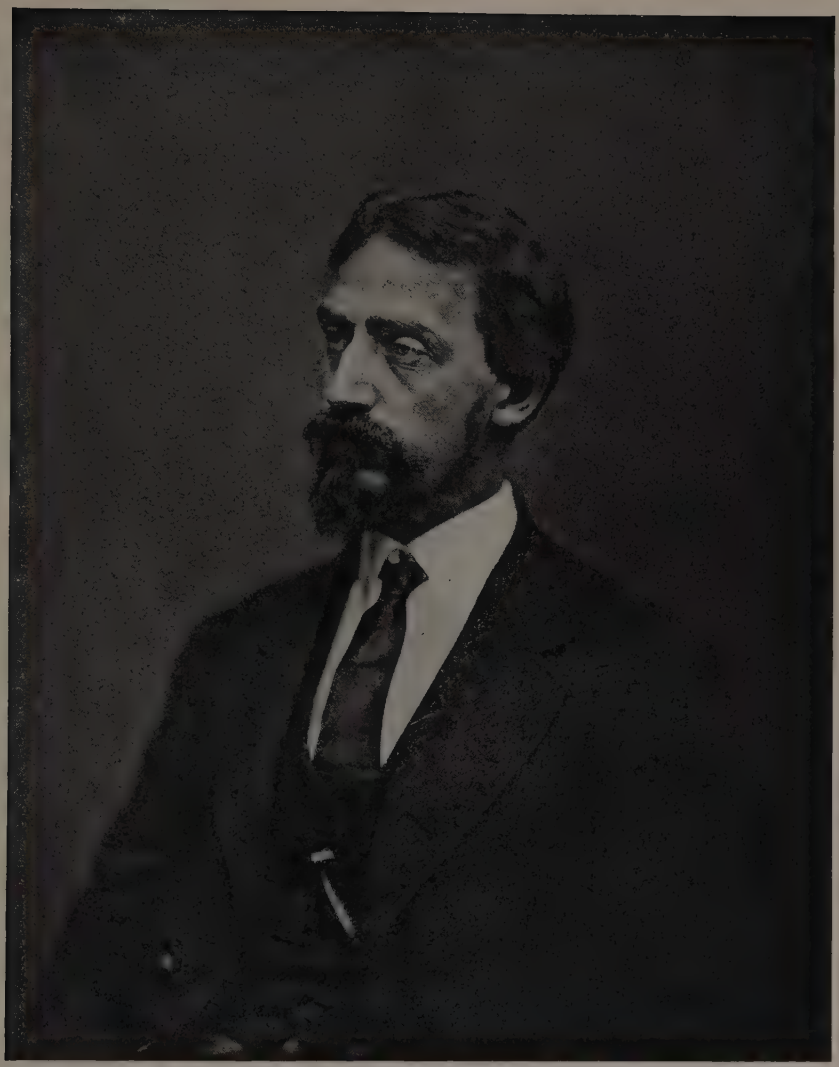
Χερσίν τε καὶ ποσὶ καὶ νόῳ τετράγωνον, ἄνευ ψόγου τετυγμένον.[2]

THAYER, JAMES BRADLEY,[3] was born January 15, 1831, in Haverhill, Essex County, Massachusetts, the second son of Abijah Wyman and Susan (Bradley) Thayer. His father was the editor of a Whig country paper, and, during the years

[1] Letter to Henry M. Bates, 14 Mich. L. R. 49.

[2] "In hand and foot and soul four-square, fashioned without fault." Quoted from Simonides by Socrates in the Protagoras.

[3] By James Parker Hall. From Lewis' Great American Lawyers. Copyright, 1909, by the John C. Winston Co., Philadelphia. (With some omissions.)



James B. Thayer.

JAMES BRADLEY THAYER
About 1874, when he began to teach

immediately preceding the son's admission to college, the family lived in Northampton. In 1848 young Thayer entered Harvard College, from which he was graduated in 1852 in the same class with Joseph H. Choate. He was class orator and won an election to Phi Beta Kappa. After teaching two years in the Milton Academy, he entered the Harvard Law School in 1854, and, upon his graduation in 1856, he received the first prize for an essay on the Law of Eminent Domain, published in the Boston *Law Reporter* of that year. In December, 1856, he was admitted to the Suffolk bar, forming a partnership with William J. Hubbard, and, in 1865, one with Peleg W. Chandler and George O. Shattuck, the latter's place in the firm being taken in 1870 by John E. Hudson. While in practice he was a contributor to Bouvier's Law Dictionary, and in 1870 was a revising editor of the twelfth edition of Kent's Commentaries, written by the present Mr. Justice Holmes of the United States Supreme Court.

In 1874 Mr. Thayer accepted the Royall Professorship of Law in the Harvard Law School, and, at the age of forty-three, began the great work of his life. In company with Langdell, Ames, and Gray, he laid the foundations of the Law School as the present generation knows it. At the time he took up the teacher's profession he had perhaps never become wholly absorbed in the practice of law. The large amount of literary criticism from his pen between 1862 and his appointment at the Law School in 1874 indicates the breadth of his other interests. But, once launched in the new career, its problems and duties speedily absorbed his most earnest attention. The graceful literary essays ceased, and in their place began that series of contributions to the theory and history of the law which earned for him so high a place in the opinions of both legal scholars and practical jurists. Though he taught some other subjects also during his years in the Law School at Harvard, it is upon his work in evidence and constitutional law that Professor Thayer's reputation as a legal scholar and thinker will always rest, and no account of this life would be complete that did not clearly point out the character of his achievements in these fields.

Early in his teaching career, Professor Thayer formed the intention of writing a practical treatise on the law of evidence. As soon as he began to collect material for this, and, like Sir Henry Maine, "let his intelligence play freely over the subject," his clear and highly trained mind was struck by the existence of

confusion and difficulties not at all met by the conventional abracadabra of fiction and reasoning to be found in the books. To use his own words:

"It soon became apparent that it was impossible to write anything which would satisfy my own conceptions of what was needed, without a careful examination of the older law of trials, and without adding to this a critical study of a considerable number of related topics, crudely developed and half-understood, as it appeared and still appears to me, which overlie and perplex the main subject in hand. It was necessary that these collateral matters should be detached from the law of evidence, carefully scrutinized and discriminated, and set in their true places."

The results of this investigation, extending over many years, are embodied in Professor Thayer's most important single work, the Preliminary Treatise on Evidence at the Common Law, which was published in 1898, and contained, in large part, matter that had appeared in the form of essays in the *Harvard Law Review* between 1889 and 1893. In 1892 he had published his admirable and widely used Cases on Evidence.

Just before Thayer entered the Law School, Dr. Heinrich Brunner of Berlin had published his famous work on the Origin of the Jury, which recorded the institution's early history on the Continent but did not attempt to follow its development in England after it secured firm foothold there during the reign of Henry II. The unfolding of this later story Professor Thayer believed would explain much that seemed crude and unintelligible in the modern law of evidence, and with this purpose he diligently undertook the task of exploring the early English chronicles, judicial records, and legal writings. Never was hypothesis more brilliantly vindicated, or historical research more abundantly rewarded. He was not, of course, the first person to discover that the law of evidence was the product of the jury system. That was patent upon very slight consideration. But he was the first definitely to show by the written records of English law just how and when the successive steps in the development of trial by jury were taken; how from being a somewhat arbitrary method of proof it gradually evolved into a rational method of trial; and how out of the practical administration of the latter grew and crystallized our rules of evidence. The development of the institution, step by step through century after century, is traced with a wealth of historical knowledge, a fullness of illus-

tration and reference, and a minuteness of scholarship that compel in the reader a full measure alike of admiration and conviction. The judicial records and writers before the eighteenth century have been so thoroughly read and so skilfully used that the author's conjecture is seldom necessary to bridge a gap or resolve a doubt — the evidence speaks for itself.

The second part of the work is analytical, comprising a searching examination into the true character of the law of evidence, a keen discrimination of it from a variety of matters with which it is ordinarily confused, and a critical study of several topics connected with judicial administration. The central thesis is that the law of evidence performs its characteristic function in excluding from the jury evidential matter, which, though logically probative, must for practical reasons be kept from their consideration. This conception, acutely and consistently applied by him to the chief sources of confusion, is Professor Thayer's great contribution to the theory of the subject. The detailed working-out of most of the rules of evidence during the last two or three centuries Professor Thayer did not live to publish, nor perhaps even to complete for himself. It has since been accomplished with great thoroughness in the monumental work of his disciple, Professor Wigmore.

The other subject in which Professor Thayer became a widely recognized authority was constitutional law. From his student days in the Law School this topic had attracted his interest. Mention has already been made of his graduating prize essay on The Law of Eminent Domain, in 1856. In this essay appears, carefully elaborated, the doctrine afterward adopted by the United States Supreme Court, denying the power of a Legislature to make an irrepealable contract limiting its exercise of vital governmental functions.[1]

An opinion which Professor Thayer early formed and always vigorously maintained was that great freedom should be given the Legislature in adopting and pursuing its chosen policies. In the same spirit he always insisted upon the wisdom and necessity of judicially upholding all legislation concerning the constitutionality of which there might be reasonable disagreement. In a time like our own, when change and conflict in social and economic theory are so promptly reflected in the statute-book, too serious attention cannot be given to the nature and extent of the judicial power to control legislation.

[1] 19 L. Rep. 241, 301. 1856.

Besides half a dozen carefully considered articles in the law journals, Professor Thayer's chief published work in constitutional law was his Cases on Constitutional Law in two large volumes, which not only brought together all of the great decisions that have developed and enforced the principal American doctrines of the subject, but also contained a valuable collection of historical material illustrating the growth of the political and governmental theories that early influenced our constitutions and with reference to which much in them must still be read. In this part of the work he suggests that our early adoption of the novel doctrine that courts may declare laws unconstitutional was much influenced by our colonial experience, during which the English Privy Council on appeal declared colonial laws in violation of the charters to be void. It was his reputation as a sound and statesmanlike constitutional lawyer that moved President McKinley to offer Professor Thayer a place on the Philippine Commission in 1900 — an honor which his health and engagements compelled him to decline; and it was not until after his death that it became known that his hand had drafted a large part of the constitutions of the two Dakotas.

It goes without saying that a man of Professor Thayer's exact scholarship and breadth of view left his mark upon legal education in America. In the professor's chair he was painstaking, candid, never dogmatic, yet firm in his own carefully formed opinions. He found teaching very difficult at first, and there were certain streets in Cambridge through which he afterwards hated to go because he had been used to walk there disheartened in this early time. His success with his students was not that of the magnetic teacher whose very personality inspires enthusiasm in the work. It lay in the admiration and respect of many successive classes for his mastery of what he taught, for the power and accuracy of his thinking, and for the modesty and fineness of the man. Of his method as a teacher one of his pupils has said:

"It was to the better men in his classes that Professor Thayer's teaching was chiefly addressed. His desire seemed rather to fathom the depths of the subject before him than by evading difficulties and exceptions to present the simpler outlines of the law in such fashion that the dull and the slow could comprehend them. He was infinitely patient with the poorly gifted, but he did not let the limits of their comprehension define the boundaries of the work in his courses. . . . He had little inclination to develop

from his own mind a perfectly logical or entirely consistent body of legal doctrine. If the law as he found it was neither logical nor consistent, the effort of his teaching was to show exactly what the law was, and how it had grown up in this way rather than to work out a more systematic and logical theory than the courts had made. Accordingly, he aimed to bring out the precise legal significance of each case he dealt with. The exact question of law decided by the court was the fundamental thing to be considered, and to this end he was particular to have it carefully noted how the case had been carried to the higher court, and the nice shades of distinction depending on this. I have always thought his analysis of a case more exact and complete than that of anyone else I ever knew. He never found more in a case than actually was there, and nothing that was there escaped him."

And the concluding words of the same writer will find an echo in many hearts:

"Few can have attended his lectures without learning more than the legal doctrines which were the direct objects of their study. Something at least of the accurate and careful habits of minds, the patience in wearisome investigation, the absolute intellectual sincerity, the never-failing kindness and courtesy, which distinguished the teacher, must have borne fruit in the minds and hearts of the pupils."

Professor Thayer served as chairman of the Section on Legal Education of the American Bar Association, and was the first president of the Association of American Law Schools. He was also a member of the Selden Society. During his practice he kept up a keen interest in the world of letters, and most of the great translations and noteworthy poetry that appeared in England or America between 1860 and 1875 were reviewed by him in the principal literary publications of New York and Boston. With such delicacy and discrimination was this done that in 1872 he was offered a professorship of English in Harvard College. After entering the Law School he found time for several privately printed biographies and memorials of departed friends, and one of his happiest gifts was the rare touch with which he could so fitly characterize those whom death had claimed.

In 1861 Mr. Thayer married Sophia Bradford Ripley of Concord, and they lived in Milton until 1874, when they moved to Cambridge. Of their four children, he lived to see the two sons,

Ezra (*q. v.*) and William, well on the way toward distinction in their professions of law and medicine; one daughter, Theodosia, a successful artist; and the other, Mrs. John W. Ames, happily established in her own home. The breadth of Professor Thayer's interests and his own qualities of mind and character made him an intimate of the choice spirits of both the Concord and the Cambridge circles of his day, and the hospitality of his home was simple and gracious.

Professor Thayer was a good citizen. Upon most public questions of importance he not only held firm convictions, which upon proper occasion he expressed vigorously, but he gave freely of time and energy to the causes which he espoused. During the Civil War he was secretary of the executive committee of the New England Loyal Publication Society, which supplied material for loyal editorials and newspaper articles to the country press throughout the North and West, 1500 copies being sent out weekly at times. In 1886 he took a prominent part in the agitation for better methods of dealing with the tribal Indians, which resulted in the passage by Congress of the Dawes Bill in the following year. In furtherance of this, and to secure proper administration of the law after its passage, he wrote newspaper and magazine articles, and made several addresses which were widely circulated and discussed. He argued for tariff reform, and publicly protested against the improvident granting of valuable franchises by the municipalities of his state. Upon questions of local politics and policy he was a frequent contributor to the Boston and Cambridge papers, and the very readable comments which appeared over his signature sometimes disposed of his opponents with a vigor and completeness vastly entertaining. Broadly tolerant of honest differences of opinion, he had for loose thinking and disingenuous reasoning a scorn born of his own clear and candid mental processes, and in any controversy he was apt to deal with these faults severely. This characteristic appeared in his legal writings as well as in these informal discussions in which he wrote as a free lance.

He was a man of strong religious faith. The reflections of early manhood, which had all but moved him to enter the ministry, and his later friendship and intercourse with Emerson, gave to his Unitarianism a vigor and enthusiasm not common among lay members. He accepted his share of responsibility and labor in the church, without question, as he accepted all other duties that came to him.

The end of this full, well-rounded life came suddenly. Professor Thayer had been warned of impending heart trouble, and in July, 1901, he wrote to one of his colleagues, "The head seems all right yet — so far as I can judge — but in other regions time is telling. Fast walking and mountain climbing are for others now." On Friday, February 14, 1902, he was slightly ill and did not meet his classes at the Law School. He sat down to dinner at home, and, at the close of the meal, he suddenly lost consciousness, and immediately expired from heart failure. He was buried from Appleton Chapel of Harvard University, and five hundred students of the Law School, braving a driving storm of snow, accompanied the body from the house as a guard of honor. Among the papers in his study was found this touching memorandum, made by him just before the opening of the college year:

"Sep. 15
For next year

Have a single plan to be put through. Without that the small, everyday matters eat up all the time. They easily may, for they can be done either well enough, or *perfectly*.

That plan must be the 2d volume of Evidence.

For the year following, a small Vol. on Const. Law.

For the time following that, the works, writings, and life of Marshall —

and then an End."

THOMAS, BENJAMIN FRANKLIN, A.B. Brown University, 1830, studied at Harvard Law School in 1831 and 1832. He entered practice in Worcester in 1834, served in the Legislature in 1843, was Probate Judge for Worcester County, 1844–48, and Associate Justice of the Supreme Judicial Court, 1853–59. He then practised in Boston until his death in 1878, and also served a term in Congress, 1861–63. For the academic year 1872–73 he was Lecturer on the Law of Wills.

THOMPSON, WILLIAM GOODRICH, A.B. 1888, A.M. and LL.B. 1891, entered practice in Boston. In the autumn of 1912 he gave a series of lectures on Brief-making at the Law School, which he has repeated in succeeding years.

TORREY, HENRY WARREN, A.B. 1833, A.M. 1847, LL.D. 1879, after being Instructor in Elocution, and Tutor, was McLean Professor of Ancient and Modern History at Harvard College

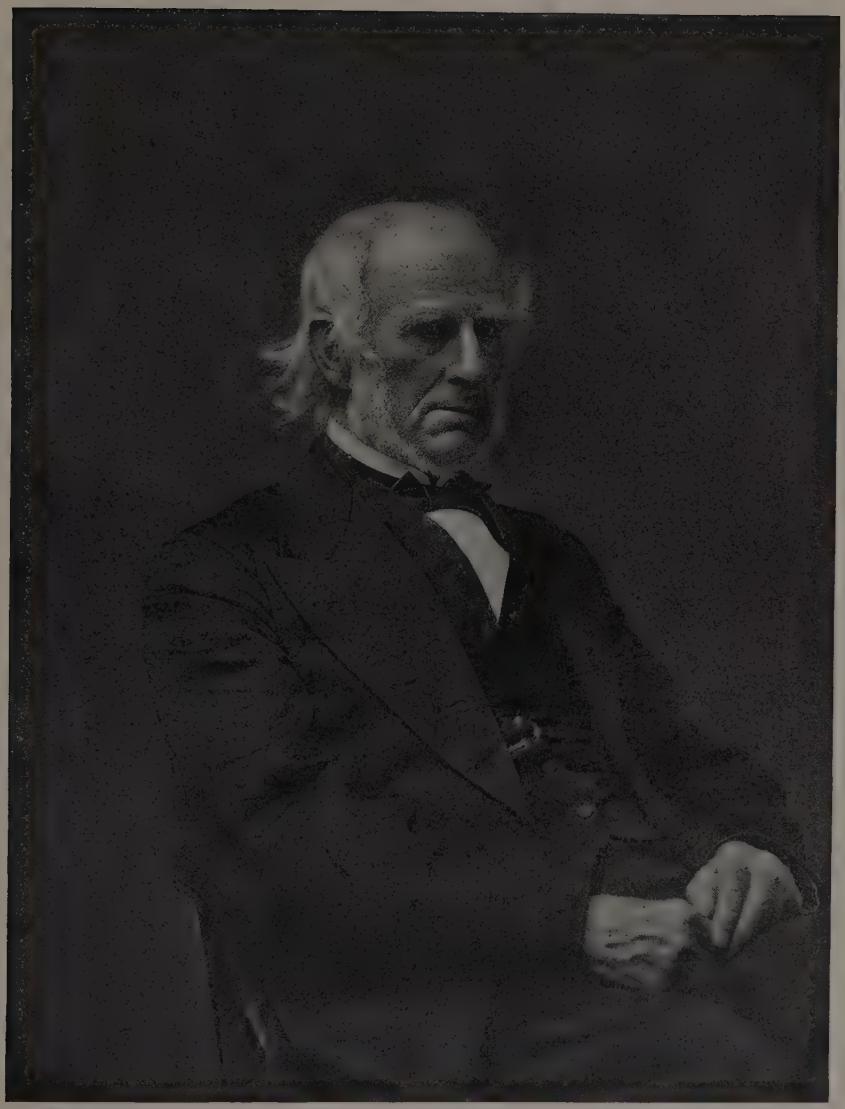
from 1856 to 1886, when he became Professor Emeritus. During the academic year 1886–87 he delivered a course of lectures in the Law School on International Law. He died in 1893.

VINOGRADOFF, PAUL GAVRIILICH, Corpus Professor of Jurisprudence at Oxford University since 1903, was born in Russia, 1854. He has written a large number of legal treatises, especially on Medieval Law. It was his influence which in 1884 led Maitland to begin his work in legal history. Professor Vinogradoff delivered a series of lectures on Comparative Ancient Law at Harvard Law School in 1907.

WARNER, JOSEPH BANGS, A.B. 1869, A.M. 1872, LL.B. 1873, a leader of the Boston Bar, was Lecturer on Constitutional Law, 1886–87.

WASHBURN, EMORY, was born in Leicester, Massachusetts, February 4, 1800. He attended Dartmouth College, then Williams, from which he graduated in 1817. He was at the Harvard Law School in 1819–20 in the old "one-man corporation" days of Stearns, and was admitted to the bar in 1821, practising first in Leicester, but after 1828 in Worcester. As a lawyer he was immensely industrious, and his universal courtesy gained him the universal favor of the people. He was at the service of his clients at all hours, and built up a very large practice in Worcester County. Senator Hoar in his Autobiography says that Washburn had the largest practice in the Commonwealth, west of Boston, and that though he had very formidable contemporaries and antagonists at the Worcester Bar, yet he probably won more cases, year in and year out, than any of them. He was a representative from Leicester in the Massachusetts Legislature in 1826–27, and from Worcester in 1838; state senator, 1841–42; judge of the Court of Common Pleas, 1844–48; and Governor of Massachusetts in 1853, having actually been nominated, during an absence in Europe, without his own knowledge. In the autumn of 1853 he was defeated for reëlection by the "Know Nothing" or "American" party.

On March 17, 1855, he was appointed Lecturer in the Law School, in place of Judge Loring; and was appointed University Professor, February 23, 1856. The name of his professorship was changed to the Bussey Professorship in 1862, in honor of Benjamin Bussey, a benefactor of the School. He at once took his place with Parker and Parsons, in the Triumvirate which for



Emory Washburn.

fifteen years conducted the School. Of the three, he was the most accessible to students, and became one of the best-beloved teachers in the history of the School. Judge Holmes has spoken of his "kindly ardor," and of the enthusiasm of his lecture room; and Judge Brown asserted that his "eloquence made even the law of contingent remainders interesting and the Statute of Uses and Trusts to read like a novel." Like Parsons he gave a yearly lecture of advice and delightful reminiscence, in which he used to tell the students to stick to law until they had made their pile. "Then go in, boys, there's nothing like it!"

In describing his first official visit to the Law School, late in 1869, President Eliot speaks of knocking at the door of Washburn's room, and, entering, "received the usual salutation of the ever-genial Governor Washburn, 'Oh, how are you? Take a chair' — this without looking at me at all. When he saw who it was, he held up both his hands with his favorite gesture, and said, 'I declare, I never before saw a President of Harvard College in this building.' Then and there I took a lesson under one of the kindest and most sympathetic of teachers."

An extract from an essay by his grandson, S. F. Batchelder,[1] presents an interesting picture of Professor Washburn.

"His interests were broad and varied. He was foremost in prison reform and in the direction of various benevolent institutions. He was an enthusiastic antiquarian, especially in New England town history. He was a copious writer for the press, and was in constant demand as a speaker. His public spirit was unflagging and direct. Governor Bullock tells of seeing him, during wartime, marching as a private in the 'home guard' at a military funeral. When Bullock expressed his surprise at the humble part taken by a former chief executive, Washburn, at that time considerably over sixty years old, replied quite simply, 'Oh, yes, I have done this often, sometimes at night. I like to help along when I can.'

"Washburn had an enormous capacity for work. He seemed to have mastered the art of living without sleep. From an early morning hour till far into the night he was to be found at the School in his 'private' office. Never was there a more delicious misnomer, for he was deluged with an unending stream of callers, friends, strangers, students, politicians, and clients." . . .

One of Washburn's old pupils calls him "the most obliging man I ever knew. However busy he might be, and he was a

[1] Old Times at the Law School. 90 Atl. Mon. 642. (1902).

very hard worker, he would stop to talk with a student and explain any difficulty that he might have encountered in the course of his studies."[1]

"As a lecturer, he was delightful," continues Batchelder. "So great was his popularity that it was not uncommon for undergraduates and members of other departments to stroll over to the law lectures 'just to hear Washburn awhile.' His prodigious power of throwing himself body and soul into the case before him, be it that of actual client or academic problem, joined to his long experience and public prominence, gave assured weight to his words; while his wonderfully winning personality, his genial spirit and his well-remembered hearty laugh gained him the love and esteem of every listener.

"Indeed, Professor Washburn will go down in the history of the school, above all his professional excellences, as preëminent for his humanity. Mr. Brandeis, in his sketch of the School, epitomizes him as the most beloved instructor in its annals. Every student seemed the especial object of his solicitous interest. He not only acted as director, confessor, and inspirer of his pupils during their stay in Cambridge, but somehow found time to correspond with them, often for years, after they had scattered throughout the length and breadth of the land."

Washburn's chief contribution to scholarship was in the law of property; and his works on Real Property and Easements have never been entirely superseded by later works. His "Judicial History of Massachusetts" contains a mass of information about the bench and bar before the Revolution. He was the last of the Triumvirate to remain in the School, resigning April 3, 1876. Even then he was not ready to stop work, but reentered the Massachusetts House of Representatives and became chairman of the Judiciary Committee. The strain was too great, and he died in Cambridge, March 18, 1877.

WESTON, ROBERT DICKSON, A.B. 1886, studied at the Law School until 1888. Since then he has practised law in Boston. In the spring of 1913 he gave the course in Deeds at the Law School, after the retirement of John Chipman Gray.

WILLIAMS, FRANK BEVERLY, A.B. 1888, LL.B. 1895, was appointed Instructor in Property for the academic year 1896–97. The following year he was appointed Assistant Professor of Law

[1] Everett P. Wheeler, the Harvard Law School in 1857, 13 City College Q. 153. (1917.)

for five years. Part of his work was to be a course in Roman Law at the Law School, as he was learned in that subject. Illness, however, compelled Mr. Williams to resign after one year's service. On his recovery he entered practice in Cleveland and was at one time Professor of Law in the Law School of Western Reserve University. He died in Cleveland, July 12, 1912.

WYMAN, BRUCE, A.B. 1896, LL.B. 1900, was appointed Lecturer on Administration Law, 1900–01. For the next two years he taught Suretyship and Mortgage, Property, Carriers, and Conflict of Laws as Lecturer, and in 1903 was appointed Assistant Professor. In 1908 he became Professor of Law and served until his resignation in 1913. Besides the subjects above named, he taught Contracts and Public Service Companies. He is now practising law in Boston. He is the author of several important legal treatises, particularly on Carriers and Public Service Companies.

APPENDIX II

THE SUCCESSION TO THE PROFESSORSHIPS

Royall, founded 1786

Isaac Parker, 1815–1827
John Hooker Ashmun, 1829–1833
Simon Greenleaf, 1833–1846
William Kent, 1846–1847
Joel Parker, 1847–1868
Nathaniel Holmes, 1868–1872
James Bradley Thayer, 1873–1883
John Chipman Gray, 1883–1913
Joseph Henry Beale, 1913

Dane, founded 1829

Joseph Story, 1829–1845
Simon Greenleaf, 1846–1848
Theophilus Parsons, 1848–1869
Christopher Columbus Langdell, 1870–1900
James Barr Ames, 1903–1910
Ezra Ripley Thayer, 1910–1915

Bussey, founded 1862

Emory Washburn, 1862–1876
Charles Smith Bradley, 1876–1879
James Barr Ames, 1879–1903
Joseph Henry Beale, 1903–1908
Joseph Doddridge Brannan, 1908–1916

Story, created 1875

John Chipman Gray, 1875–1883
William Albert Keener, 1888–1890
Jeremiah Smith, 1890–1910
Roscoe Pound, 1910–1913
Edward Henry Warren, 1913

Weld, founded 1882

Oliver Wendell Holmes, 1882–1883
James Bradley Thayer, 1883–1902
Samuel Williston, 1903

Bemis, founded 1878

Edward Henry Strobel, 1898–1906
Jens Iverson Westengard, 1915

Langdell, created 1903

Eugene Wambaugh, 1903

Carter, founded 1907

Joseph Henry Beale, 1908–1913
Roscoe Pound, 1913

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APPENDIX III

BIBLIOGRAPHY

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BY TEACHERS AT THE HARVARD LAW SCHOOL

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A Selection of Cases on the Law of Contracts. 2 vols. Boston, 1903–04

Rescission by Parol Agreement. 4 Colum. L. Rev. 455. 1904

[Book Review.] *The Law of Contracts.* THEOPHILUS PARSONS. Ninth edition. 17 H. L. R. 368. 1904

Accord and Satisfaction. 17 H. L. R. 459. 1904

Cases on Engineering Contracts. Edited by Samuel Williston; arranged by Bruce Wyman. Boston, 1904

Discharge of Contracts by Alteration. 18 H. L. R. 105, 165. 1904–05

[*First*] *draft of an Act for codifying the Law of Warehouse Receipts.* SAMUEL WILLISTON *and* BARRY MOHUN. n. p. 1905

Same. Second draft. (See above.) Cincinnati, 1905

Same, third draft. Cincinnati, 1906

Principles of Contract at Law and in Equity; a treatise on the general Principles concerning the Validity of agreements in the Law of England and America, by SIR FREDERICK POLLOCK. Third American from the Seventh English Edition, with anno-

tations and additions. GUSTAVUS H. WALD *and* SAMUEL WILLISTON. N. Y., 1906

[Book Review.] *Cases on Quasi-contracts.* J. B. SCOTT. 19 H. L. R. 227. 1905.

(The arrangement of a case-book.)

Transfers of After-acquired Personal Property. 19 H. L. R. 557. 1906

The Right of a Seller of Goods to recover the Price. 20 H. L. R. 363. 1907

[*First*] *Draft of an Act to make Uniform the Law of Bills of Lading* n. t. p. [1906]

Second draft. Cincinnati, 1907

Third draft. Cincinnati, 1908

Fourth draft. Cincinnati, 1909

Fifth draft. n. p. 1909

First Draft of an Act to make Uniform the Law of Certificates of Stock. Cincinnati, 1907

Second draft. Cincinnati, 1908

Third draft. Cincinnati, 1909

Fourth draft. Cincinnati, 1909

What Constitutes an Express Warranty in the Law of Sales. 21 H. L. R. 555. 1908

The New Sales Act. 42 Am. L. Rev. 898. 1908

The Effect of a National Bankruptcy Law upon State Laws. 22 H. L. R. 547. 1909

The Law governing Sales of Goods at Common Law and under the Uniform Sales Act. N. Y., 1909

[Book Review.] *A Treatise on the Law of Trustees in Bankruptcy,* etc. A. S. WOODMAN. 23 H. L. R. 72. 1909

James Barr Ames — His Services to Legal Education. 23 H. L. R. 330. 1910

An Ambiguity in the Negotiable Instruments Law. 23 H. L. R. 603. 1910

American Uniform Commercial Acts. [Reprints.] Cincinnati, 1910

Lectures on Business Law and the Negotiable Instruments Law. [Boston], 1910–11

Liability for Honest Misrepresentation. 24 H. L. R. 415. 1911

Unrecorded Conditional Sales in Bankruptcy. 24 H. L. R. 620. 1911

Releases and Covenants not to Sue Joint, or Joint and Several Debtors. 25 H. L. R. 203. 1912

[Book Review.] *The Law of Contracts.* CLARENCE D. ASHLEY. 25 H. L. R. 575. 1912

Lectures on Commercial Law and the Law of Negotiable Instruments. [Boston, 1913]

Representation and Warranty in Sales. Heilbut v. *Buckleton.* 27 H. L. R. 1. 1913

Consideration in Bilateral Contracts. 27 H. L. R. 503. 1914

[Book Review.] *Selected Cases on the Law of Contracts.* E. W. HUFFCUT *and* E. H. WOODRUFF. Third edition. 27 H. L. R. 601. 1914

Great Teachers of Law. 17 Harv. Alum. Bull. 105. 1914

The Uniform Partnership Act. An Address. Phila., 1914–15

Commercial Law; prepared for the American Institute of Banking. N. Y., 1915

Negotiable Instruments; prepared for the American Institute of Banking. N. Y., 1915

[Book Review.] *The History and Present Position of the Bill of Lading* etc. W. P. BENNETT. 28 H. L. R. 536. 1915

John Chipman Gray. 28 H. L. R. 544. 1915

Does a Pardon Blot Out Guilt? 28 H. L. R. 647. 1915

[Book Review.] *The Rights of Creditors respecting their Debtor's Property.* GARRARD GLENN. 28 H. L. R. 721. 1915.

[Book Review.] *The Law of Sales of Stocks and Bonds.* M. T. THOMPSON. 29 H. L. R. 562. 1916

[Book Review.] *Problems in the Law of Contracts,* HENRY W. BALLANTINE. 29 H. L. R. 563. 1916
(The advantages of the case system.)

Is the Right of an Assignee of a Chose in Action Legal or Equitable? 30 H. L. R. 97. 1916

[*John Chipman Gray.*] *In* John Chipman Gray, p. 113. Boston, 1917

The Word "Equitable" and its Application to the Assignment of Choses in Action. 31 H. L. R. 822. 1918.

WYMAN, Bruce (1900–14)

[Book Review.] *A Selection of Cases on the Law of Contracts.* W. A. KEENER. 12 H. L. R. 361. 1899
(The arrangement of a case-book.)

Competition and the Law. 15 H. L. R. 427. 1902

[Book Review.] *The Coal Mines and the Public.* H. W. CHAPLIN. 16 H. L. R. 73. 1902
(The test of a public calling.)

Cases on Public Service Companies. Public Carriers, Public Works, and other Public Utilities. J. H. BEALE *and* BRUCE WYMAN. Camb., 1902

Second edition (by Wyman). Camb., 1909.

Cases on Restraint of Trade. Camb., 1902–04

The Principles of the Administrative Law governing the Relations of Public Officers. St. Paul, 1903

A Selection of Cases on Mortgages, with collateral citations. [Pt. I.] Camb., 1903

Second edition. Camb., 1903

Revised edition. Camb., 1906

[Book Review.] *The Law of Suretyship.* A. A. STEARNS. 16 H. L. R. 612. 1903

Cases on Engineering Contracts. Edited by Samuel Williston; arranged by Bruce Wyman. Boston, 1904

The Law of the Public Callings as a Solution of the Trust Problem. 17 H. L. R. 156, 217. 1904

Business Policies Inconsistent with Public Employment. 20 H. L. R. 511. 1907

The Law of Railroad Rate Regulation, with Special Reference to American Legislation. J. H. BEALE *and* BRUCE WYMAN. Boston, 1907

Second edition (by Wyman). N. Y., 1915

The Clog on the Equity of Redemption. 21 H. L. R. 459. 1908

The Obligations of Public Services to Make Connections. 22 H. L. R. 564. 1909

The Inherent Limitation of the Public Service Duty to Particular Classes. 23 H. L. R. 339. 1910

Illegality as an Excuse for the Refusal of Public Service. 23 H. L. R. 577. 1910

Control of the Market; a legal solution of the Trust Problem. N. Y., 1911

The Special Law governing Public Service Corporations and all others engaged in Public Employment. 2 v. N. Y., 1911

State Control of Public Utilities. 24 H. L. R. 624. 1911

Samuel Williston, Professor of Law. 23 Green Bag 613. 1911

[Book Review.] *Valuation of Public Service Corporations.* R. H. WHITTEN. 26 H. L. R. 464. 1913

[Book Review.] *A Treatise on the Law of Public Utilities.* OSCAR L. POND. 27 H. L. R. 292. 1914

Jurisdictional Limitations upon Commission Action. 27 H. L. R. 545. 1914

Separation of Interstate and Intrastate Accounts in Federal and State Regulation of Rates. 28 H. L. R. 742. 1915

The Rise of the Interstate Commerce Commission. 24 Yale L. J. 529. 1915

Law of Public Service Companies — especially Common Carriers; with illustrative cases. 13 Modern Am. Law, 1–143; 493–596. Chic., 1914

APPENDIX IV

BIBLIOGRAPHY OF THE HARVARD LAW SCHOOL

NOTE. — This bibliography is not complete. Information as to missing items will be welcomed. Manuscripts not in the possession of the Law School have not been listed, e.g. Harvard University records and correspondence; Sumner Papers in Harvard College Library; Story Papers in possession of Mass. Hist. Society, etc. Material relating specifically to the case system and recent questions of legal education will be found in Appendix V.

A. OFFICIAL PUBLICATIONS, COMPILATIONS, AND RECORDS

1. CATALOGUES OF THE LAW SCHOOL

Catalogue of Law Students, 1817. M.S. 40 pp. n. t. p.

Catalogue of Students, to 1851. 96 pp. Camb., 1851

Catalogue of Students, to 1858. 135 pp. Camb., 1859

Catalogue of Officers and Students, 1817–87. xii + 244 pp. Camb., 1888

Quinquennial Catalogue of Officers and Students, 1817–89. Camb., 1890

[Similar catalogues have appeared for 1894, 1899, 1904, 1909, 1914.]

Harvard Law School List. (4) + 91 pp. Boston, 1905

[*Lists of the names of past members of the School.* 1817–73 with MS notes. 16 vols.]

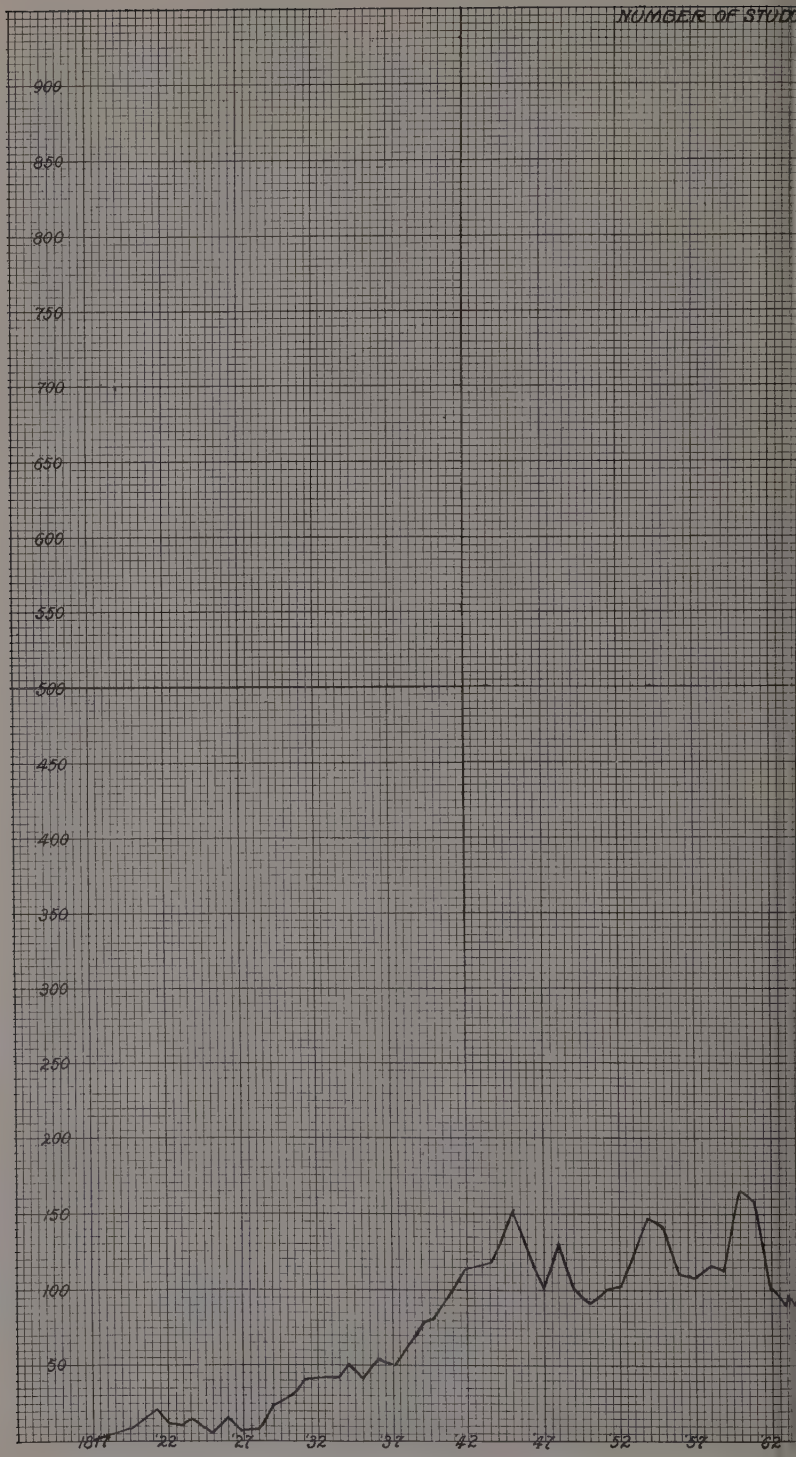
2. HARVARD UNIVERSITY ANNUAL CATALOGUES.[1]

[The first appeared in 1829 for the year 1829–30, and like all succeeding catalogues contained a section on the Law School.]

3. ANNUAL ANNOUNCEMENTS OF COURSES

[The first announcement was for the Second Term of 1869–70, beginning February 21, 1870. The announcement for 1893–94 was an elaborate pamphlet with numerous illustra-

[1] Annual publications have appeared without a break unless otherwise stated.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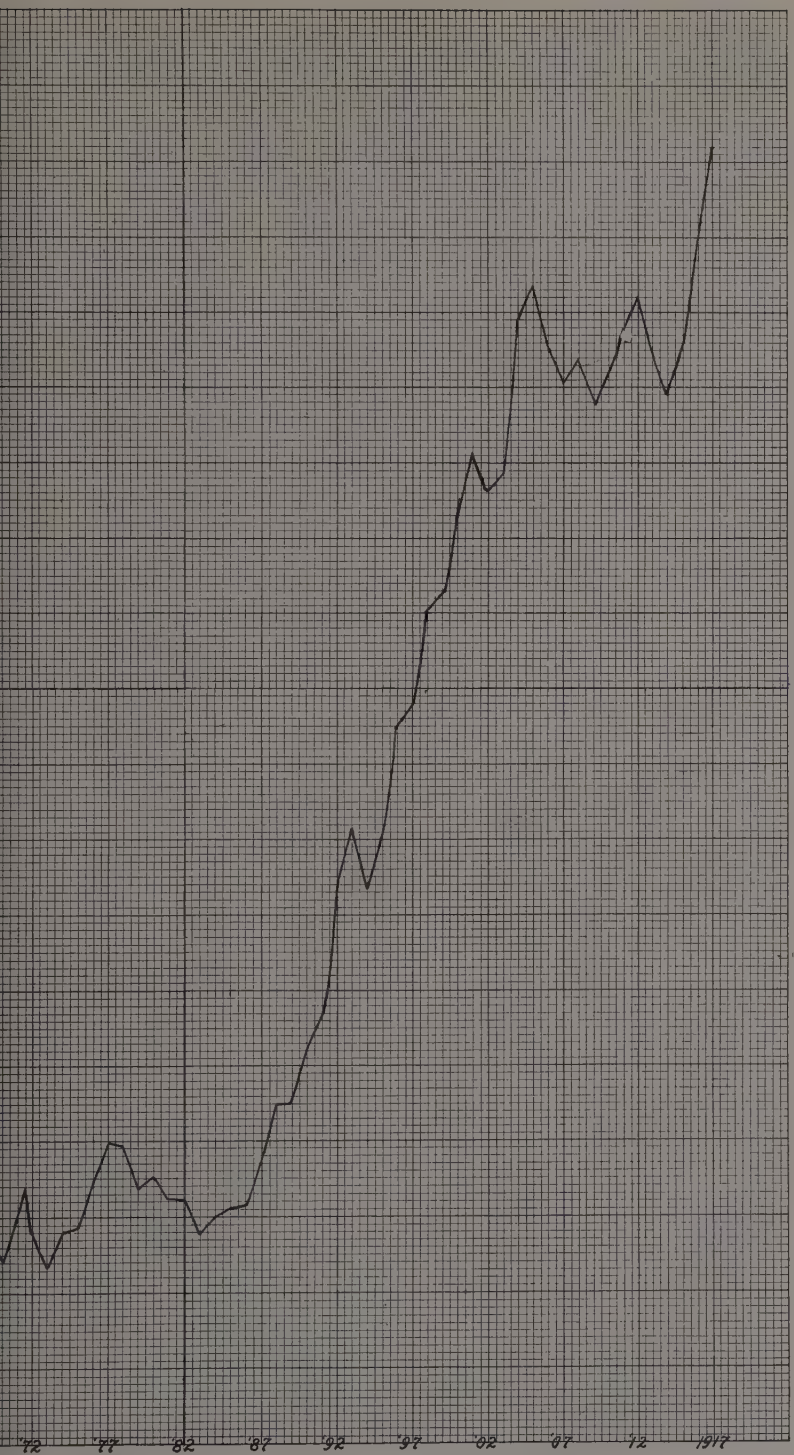

NCE, 1817–1917

DALLAS LIBRARY

tions, prepared for distribution at the World's Columbian Exposition.]

4. Annual Schedules of Lectures and Examinations

[The first lecture schedule was for the spring term for 1870. Sometimes both a list and a tabular view have been printed. The first examination schedule was for the first examinations held at the Law School, June, 1871.]

5. Annual Examinations

[These have been printed since the first examinations, June, 1871. Advanced Standing Examination Questions were printed from 1871–2 till 1898. Admission Examination Questions in Latin, French, German, Blackstone, or some of these subjects were printed from 1876–7 till 1898.]

6. Annual Reports of the President of Harvard University and the Dean of the Law School

[The first Report of the President to the Overseers appeared in 1827 for the year 1825–26. The main body of the President's report is apt to mention the Law School. Since the report for 1830–31, detailed information about the School appears in a section of the Appendix. Until the Report for 1869–70 this was prepared by one of the Law School Professors. Since then the Appendix contains the Report of the Dean of the Law School to the President. The following Dean's Reports have been separately reprinted. *Thayer's last Report as Dean.* [1913–14.] *In* Ezra Ripley Thayer: An Estimate, etc. Camb., 1916. *Report of Dean Pound of the Harvard Law School to the President of the University, for the year 1915–16.* [Camb.], 1917.]

7. Catalogues of the Library

General catalogues have been published as follows:

(1) *Catalogue of the Library of the Law School of Harvard University.* 25 pp. Camb., 1826

[There was no money to publish an official catalogue and the catalogue of 1826 was prepared by two students, one of them a son of the professor, for circulation among their fellow-students.]

(2) *A Catalogue of the Law Library of Harvard University in Cambridge, Mass.* viii + 80 pp. Camb., 1834

[This second catalogue was prepared by Charles Sumner, then Librarian.]

Same. Supplement. 16 pp. Camb., 1835

(3) *A Catalogue of the Law Library of Harvard University in Cambridge, Mass.* xii + 228 pp. 2d ed. Camb., 1841
[This catalogue was prepared by William R. Woodward, Librarian.]

(4) *A Catalogue of the Law Library of Harvard University in Cambridge, Mass.* 4th ed. 354 pp. Camb., 1846

(5) *Catalogue of the Library of the Law School of Harvard University.* 2 vols. Camb., 1909
Vol. 1: viii + 1216 pp.
Vol. 2: 1246 pp.
[This catalogue was prepared by John Himes Arnold, then Librarian. The preface explains the scope of the catalogue then published and lists the catalogues formerly published, in the following passage:

"The first catalogue of the Harvard Law Library was issued in 1826. It contained 763 titles, which described 1752 volumes. The second catalogue was printed in 1834, and was prepared by Charles Sumner, who was then Librarian. Mr. Sumner also prepared an interesting preface to the catalogue, in which a number of the oldest and rarest works are described. In 1834 the Library contained over 3500 volumes. A second edition of this catalogue was published in 1841, the Library having increased to something over 6000 volumes. A fourth edition was published in 1846, when the number of volumes was about 12,000. From that time to the present, no printed catalogue has been issued, and the number of volumes has increased to about 111,500. The present catalogue was commenced in 1902. It contains only the books on the American and English Common Law, and is an alphabetical arrangement by authors only. Separate lists have been made for the collections of trials and peerage claims, and these lists are placed at the end of volume 2. According to the plan adopted, the catalogue will consist of three volumes, to be issued successively; the first includes the letters 'A' to 'L', the second, 'M' to 'Z,' the Trials and Peerage Claims, and the third, a general index of subjects in connection with volumes 1 and 2. The subject index is in preparation and will be issued as soon as possible. The publication of a catalogue of all the books on Foreign or Continental Law is contemplated. A beginning has been made, although the work has not progressed far."]

Catalogues of two special collections were printed before these collections were acquired by the School:

Catalogue of the . . . Library formed by George Dunn . . . The First Portion, comprising the Collection of Early Manuscripts and Printed Books relating to English Law. London, 1913.

Bibliographie du Droit International par le Marquis de Olivart: Catalogue d'une Bibliothèque de Droit international et sciences auxiliaires. Deuxième édition, revisée et mise en jour. 2 vols. Paris, 1905–10

Same. Premier supplément. Liste des Livres offerts en don à l'Université de Harvard . . . par le Marquis de Olivart, 23 Novembre, 1911. Madrid, 1912

8. Records in Manuscript

List of Entries, 1817–date

[The list from 1817–73 must have been compiled about 1873.]

Register, 1829–40

Records of Marks, 1870–date

[The first marks recorded are those of the class entering in 1869.]

Records of Faculty Meetings, Sept. 27, 1870 to date

9. Miscellaneous Official Publications

Rules and Statutes of the Professorships in the University at Cambridge. Camb., 1846

B. MOOT COURT RECORDS

Rules and Regulations of the court established in the Law School of Harvard University, Feb., 1820, with Records of Cases argued in ye Law School. MS. 179 pp.

Record of Cases argued in the Court of the Cambridge Law School, 1825–27. MS. 146 pp.

Moot Court Docket. [1838–46.] MS.

Moot Court Reports. [1842.] MS. 60 pp.

Harvard Law School: Moot Court Cases, 1845–46. MS. 165 pp.

Harvard Law School: Moot Court Cases, 1866–72. MS.

Harvard Law School: Moot Court Cases, 1872. MS. 51 pp. + 501 blank

Cases Argued and Determined in the Moot Court of Harvard Law School during the Academic Year 1870–71 (continued through 1896–97). 23 vols. n. p. n. d.

Harvard Law School: Bail Court Statements. [1871–73.] MS. 58 pp. + 392 pp. blank

C. STUDENT AND ALUMNI ORGANIZATIONS

1. Law Clubs and Ames Competition

Constitution and Minutes of the Coke Club of Harvard Law School, Cambridge, Mass. [1860–72.] MS.

Washburn Club. [Constitution and Minutes, 1871–73] MS.

The Williston Book, 1895. Published by the Williston Club of the Harvard Law School. n. p. [1895]

The First Handbook of the English VI Law Club in the Law

School of Harvard University. Compiled by N. R. Brooks. 48 pp. Evanston, Ill. [1907]

History of the Marshall Club, Harvard Law School. Ralph Seward Fickett. 49 pp. n. p. [1911]

Law School of Harvard University: Regulations for the Administration of Law Clubs. 8 pp. n. p. 1911

The Ames-Gray Law Club, Harvard University: Tricennial Record, 1883–1913. [*Boston*], *1913*

The Preparation of Law Club Cases. [Notes for Harvard Law School students, based on a lecture by Eugene Wambaugh.] Zechariah Chafee, Jr. 13 pp. n. p. [1913]

Ames Competition. 1911–12, 1912–13, 1913–14, 1914–16 (2 vols.), 1916–17. 6 vols. Typewritten

Law Club Cases. 1913–14. 5 vols. Typewritten

[The School also possesses a large collection of typewritten briefs and decisions of the law clubs in former years.]

2. The Harvard Law Review

Vols. 1–30, 1887–1917 inclusive

Index Digest of the Harvard Law Review. Volumes One to Seventeen. 159 pp. Camb., 1905

Cumulative Index and Table of Cases of the Harvard Law Review. Volumes One to Twenty-five. 364 pp. Camb., 1913

Harvard Law Review. Volumes I–XX, 1887–1907, June 22, 1907. 24 pp. Camb. [1907]

Harvard Law Review. Volumes I–XXV, 1887–1912, March 30, 1912. Twenty-Fifth Anniversary Dinner, Young's Hotel, Boston. Menu. Biographical. 44 pp. [Camb., 1912]

The Harvard Law Review Fund from April 15, 1889, the date of its beginning, to March 30, 1912, the date of the twenty-fifth anniversary of the Harvard Law Review. 10 pp. n. p. 1912

3. Law School Association of Phillips Brooks House; Legal Aid Bureau

Annual Reports of Phillips Brooks House Association. Camb. [Annual work of both the Law School Association and the Legal Aid Bureau.]

Harvard Legal Aid Bureau. 15 Harv. Alum. Bull. 531. 1913

The Harvard Legal Aid Bureau. Charles B. Rugg. 16 Harv. Alum. Bull. 143. 1913

Harvard Legal Aid Bureau. [Note.] 27 H. L. R. 161. 1913

4. Class Secretary's Reports.[1]

Class of 1877. 1883
Class of 1885. 1890; 1905
Class of 1887. 1888
Class of 1888. 1889
Class of 1889. 1889; 1892
Class of 1890. 1890
Class of 1892. 1893; 1897; 1903; 1908
Class of 1893. 1894; 1898; 1904
Class of 1894. 1895
Class of 1895. 1897; 1900
Class of 1897. 1899
Class of 1898. 1903
Class of 1899. 1900; 1903
Class of 1902. 1904
Class of 1903. 1905; 1911
Class of 1904. 1909
Class of 1905. 1907; 1910
Class of 1906. 1908; 1916
Class of 1907. 1907
Class of 1908. 1909; 1913
Class of 1909. 1911
Class of 1910. 1911; 1915
Class of 1911. 1913
Class of 1913. 1916
Class of 1916. 1917

5. The Harvard Law School Association

The Harvard Law School Association. Report of the Organization and of the First general meeting at Cambridge, November 5, 1886, on the First Day of the Celebration of the Two Hundred and Fiftieth Anniversary of the Founding of Harvard College. 99 pp. Boston, 1887.

[This Report contains addresses in Sanders Theatre by James C. Carter and Oliver Wendell Holmes; and at the Dinner by James C. Carter, Christopher C. Langdell, Samuel E. Sewall, Thomas M. Cooley, Charles W. Eliot, Alexander R. Lawton, George O. Shattuck, Frank W. Hackett, John C. Gray, E. R. Hoar, and James B. Thayer.

[1] The dates of the Reports in possession of the School are given. The files are incomplete. Class Secretaries who find reports of their respective classes missing are asked to send them to the Secretary of the Law School.

Much of this Report is reprinted in Harvard University. A Record of the Commemoration, 1886. Camb., 1887.]

Catalogue of the Officers and Members of the Harvard Law School Association, April 1, 1891. 163 pp. Boston, 1891

Harvard Law School Association. Report of the Ninth Annual Meeting at Cambridge, June 25, 1895, in Especial Honor of Christopher Columbus Langdell, Dane Professor of Law and Dean of the Harvard Law School, 1870–1895. 90 pp. Boston, 1895

[This Report contains the oration in Sanders Theatre by Sir Frederick Pollock; and addresses at the Dinner by James C. Carter, Christopher C. Langdell, Sir Frederick Pollock, Horace Gray, Henry B. Brown, Oliver Wendell Holmes, Joseph H. Choate, Sinichiro Kurino, Charles W. Eliot, Charles J. Bonaparte, William A. Keener, and Gustavus H. Wald.]

Harvard Law School Association. Report of the Eighteenth Annual Meeting, at Cambridge, June 28, 1904. 115 pp. Boston, 1904

[This Report contains Addresses at the presentation of portraits at the Law School by James Byrne, Henry W. Hardon, James F. Curtis, and John C. Gray; the oration in Sanders Theatre by William H. Taft; and addresses at the Dinner by Melville W. Fuller, William H. Taft, Charles W. Eliot, James Barr Ames, Marcus P. Knowlton, Richard Olney, Kentaro Kaneko, John D. Long, Francis J. Swayze, William Rand, Jr., and Blewett Lee.]

Twenty Years of the Harvard Law School Association. WINTHROP H. WADE. 15 Harv. Grad. Mag. 608. 1907.

Same. Separately printed, with the Constitution and List of Officers, 1886–1906. 17 pp. n. p. [1907]

Harvard Law School Association. Sixth Celebration and Dinner. Harvard Union, June 28, 1910. Hon. Francis J. Swayze, Presiding. 71 pp. Boston, 1910

[This Report contains the address in Sanders Theatre by George W. Wickersham; and addresses at the Dinner by Francis J. Swayze, George W. Wickersham, Ezra R. Thayer, Henry N. Blake, Arthur P. Rugg, Arthur D. Hill, Elihu Root, Jr., and William Schofield; and remarks by Theodore Roosevelt.]

Ezra Ripley Thayer: An Estimate of his Work as Dean of the Harvard Law School Association. Published by the Harvard Law School Association. Camb., 1916

Report of Dean Pound of the Harvard Law School to the President of the University, for the year 1915–16. Published by the Harvard Law School Association. [Camb.] 1917

The Harvard Law School, 1817–1917. Published for Distribution to the graduates of the Law School by the Harvard Law School Association. [The advance sheets of the present volume.] 164 + 3 pp. Norwood, Mass., 1917

D. BOOKS, PAMPHLETS AND ARTICLES ABOUT HARVARD LAW SCHOOL

1. General

Sketch of the Law School at Cambridge. Charles Sumner. 13 Am. Jur. 107. 1835.

Report of the Committee of Overseers appointed to visit the Law School in 1849. Charles Sumner. 16 pp. Boston, 1850. Same. Works of Charles Sumner. II, 377. Boston, 1870.

The Organization, History, and Course of Instruction in Harvard Law School. 3 West. Jur. 1. 1869

The Law School of Harvard College. Joel Parker. 56 pp. N. Y., 1871

Harvard Law School and Dane Hall. Emory Washburn. MS. 22 pp. [1873]

The Harvard Law School. Louis D. Brandeis. 1 Green Bag 10. 1889.

[*Distinguished Alumni of the Harvard Law School.*] Murray E. Poole. 3 Green Bag 41. 1891

The Harvard Law School. Eliot Norton. 80 pp. n. p. n. d. [1897]

English Law and the Renaissance. Frederic William Maitland. pp. 35, 98. Camb., Eng., 1901

Old Times at the Law School. Samuel F. Batchelder. 90 Atl. Mon. 642. 1902

The Harvard Law Library. John Himes Arnold. 16 Harv. Grad. Mag. 230. 1907

Langdell Hall and the Earlier Buildings of the Harvard Law School. Eugene Wambaugh. 20 Green Bag 297. 1908

History of the Harvard Law School and of Early Legal Conditions in America. Charles Warren. 3 vols. N. Y., 1908

[Book Review.] *History of the Harvard Law School, etc.* Charles Warren. 89 Nation 539. 1909

[Book Review of the same.] By Eugene Wambaugh. 22 H. L. R. 617. 1909.

The Harvard Law Library and some Account of its Growth. JOHN HIMES ARNOLD. 5 L. Lib. J. 17. 1912.

The Story Professorship of Law. ZECHARIAH CHAFEE, JR. 16 Harv. Alum. Bull. 118. 1913

Great Teachers of Law. SAMUEL WILLISTON. 17 Harv. Alum. Bull. 105. 1914

The Harvard Law School Library. EDWARD BRINLEY ADAMS. 17 Harv. Alum. Bull. 112. 1914

Suggestions from Law School graduates as to Where and How to Begin Practice. RICHARD AMES. 27 H. L. R. 260; 22 Harv. G. M. 405. 1914

Harvard Law School's Hundred Years. JOHN RAEBURN GREEN. Boston *Evening Transcript*, May 2, 1917

A Hundred Years of the Harvard Law School. FRANCIS RAWLE. 26 Harv. Grad. Mag. 177. 1917

The Harvard Law School, 1817–1917. Published for Distribution to the Graduates of the Law School by the Harvard Law School Association. 164 + 3 pp. [The advance sheets of the present volume.] Norwood, Mass., 1917

NOTE. — Periodicals. Much information about the School from year to year will be found scattered through the volumes of the Harvard Law Review, Harvard Alumni Bulletin, and Harvard Graduates Magazine.

2. THE BEGINNINGS, 1817–1829

Inaugural Address delivered in the Chapel of Harvard University, by the Hon. ISAAC PARKER, Chief Justice of Massachusetts, and Royall Professor of Law. 3 No. Am. Rev. 11. 1816

Life of Rufus Choate. SAMUEL G. BROWN. 1878

Harvard Reminiscences. ANDREW PRESTON PEABODY. Boston, 1888. Quoted in 1 H. L. R. 400. 1888

Lemuel Shaw. FREDERIC HATHAWAY CHASE. pp. 256–259. Boston, 1918

ISAAC PARKER:

An Address delivered before the Bar of Berkshire, by LEMUEL SHAW, on his first taking his seat as Chief Justice of the Supreme Judicial Court of Massachusetts, September Term, 1830. 5 Am. Jur. 5, 1831; 9 Pick. 566

[*Chief Justice Parker.*] Joseph Story. 5 Am. Jur. 17. 1831

[*Chief Justice Parker.*] Palfrey. 5 Am. Jur. 20. 1831

ASAHEL STEARNS:

Asahel Stearns. 1 L. Rep. 369. Boston, 1839

3. THE SCHOOL OF STORY, 1829–48

Dane Professorship. Law School of Harvard University. [Dane and Quincy correspondence. Appointments.] 2 Am. Jur. 189. 1829

A Discourse pronounced upon the Inauguration of the Author, as Dane Professor of Law in Harvard University. JOSEPH STORY. Boston, 1829

The Law Institution of Harvard University. 4 Am. Jur. 217. 1830

An Address delivered at the Dedication of Dane Law College in Harvard University, October 23, 1832. JOSIAH QUINCY. Camb., 1832

Dedication of Dane Law College. 8 Am. Jur. 488. 1832

Law School at Cambridge. CHARLES FOLLEN. 36 No. Am. Rev. 395. 1833

A Discourse pronounced at the Inauguration of the Author, as Royall Professor of Law in Harvard University, Aug. 26, 1834. SIMON GREENLEAF. Camb., 1834

Cambridge Law School, Notes of Professor Greenleaf's Introductory Lecture, at the Present Term. 1 L. Rep. 217. Boston, 1838

[Book Review.] *A Catalogue of the Law Library of Harvard University in Cambridge, Massachusetts.* Second edition. 26 Am. Jur. 254. 1841.[1]

Cambridge Law School. [Greenleaf and Kent.] 9 L. Rep. 237; 4 West. L. J. 93. 1846

Resignation of the Hon. William Kent. 10 L. Rep. 286. 1847

[*Letter of William Kent about his resignation.*] 10 L. Rep. 332. 1847

[*Greenleaf and Parsons.*] 5 West. L. J. 573. 1848

Occasional references to the School will be found in the following books and articles:

Life of Josiah Quincy of Massachusetts. EDMUND QUINCY. Boston, 1867

Life of Rutherford B. Hayes. WILLIAM D. HOWELLS. N. Y. and Camb., 1876

Memoir and Letters of Charles Sumner. EDWARD L. PIERCE. 4 vols. Boston, 1878

A Memoir of Benjamin Robbins Curtis. B. R. CURTIS. 2 vols. Boston, 1879

[1] See p. 92 of this book.

Annual Address. ALEXANDER R. LAWTON. 1 Ga. Bar Ass'n. Rep. 78–79. 1884

Richard Henry Dana. CHARLES FRANCIS ADAMS. 2 vols. Boston and N. Y., 1891

Cross-examination as an Art. A. OAKEY HALL. 5 Green Bag 423. 1893

Reminiscences of David Dudley Field. A. OAKEY HALL. 6 Green Bag 209. 1894

Life and Letters of Oliver Wendell Holmes. JOHN T. MORSE, Jr. 2 vols. Boston and N. Y., 1896

Letters from John Marshall and James Kent to Story, 1829. Mass. Hist. Soc. Proc., 2d Series, Vol. XVI. Boston, 1902

Memories of Eighty Years. GEORGE W. HUSTON. Morganfield, Ky., 1904

Ebenezer Rockwood Hoar: A Memoir. MOORFIELD STORY *and* EDWARD W. EMERSON. Boston and N. Y., 1911

JOHN HOOKER ASHMUN:

A Discourse pronounced at the Funeral Obsequies of John Hooker Ashmun. JOSEPH STORY. 10 Am. Jur. 40. 1833

SIMON GREENLEAF:

Royall Law Professor at Cambridge. 10 Am. Jur. 485. 1833

Address commemorative of Professor Greenleaf. THEOPHILUS PARSONS. 16 L. Rep. 413. 1853

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"I pass over the rest of my college course, and the years spent at the Harvard Law School, where were instilled into me without difficulty the dictums that the law is the most important of all professions, that those who entered it were a priestly class set aside to guard from profanation that Ark of the Covenant, the Constitution of the United States. In short, I was taught law precisely as I had been taught religion, — scriptural infallibility over again, — a static law and a static theology, — a set of concepts that were supposed to be equal to any problems civilization would have to meet until the millenium. What we are wont to call wisdom is often naïvely innocent of impending change. It has no barometric qualities."

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APPENDIX V

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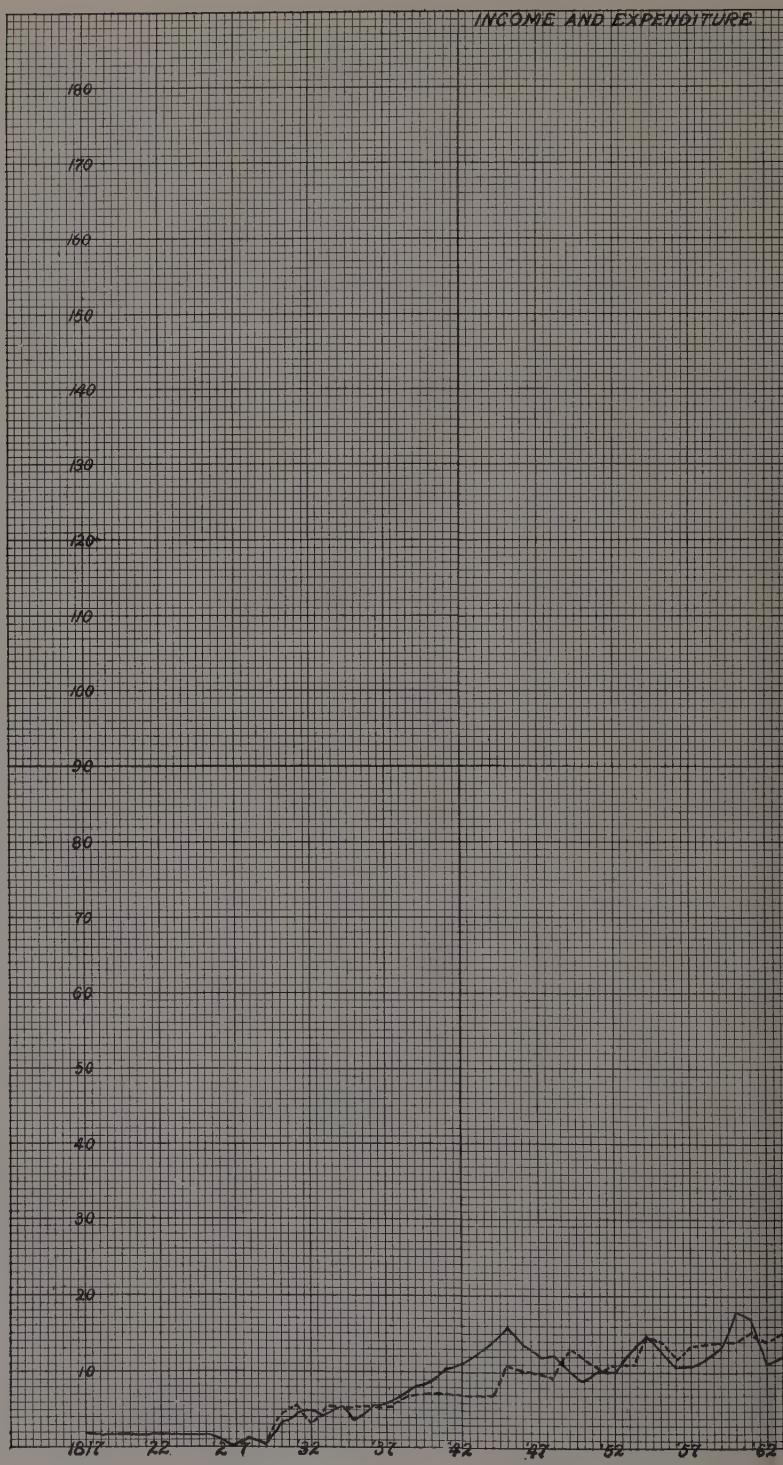
LIBRARY OF
SOUTHERN METHODIST
DALLAS, TEXAS



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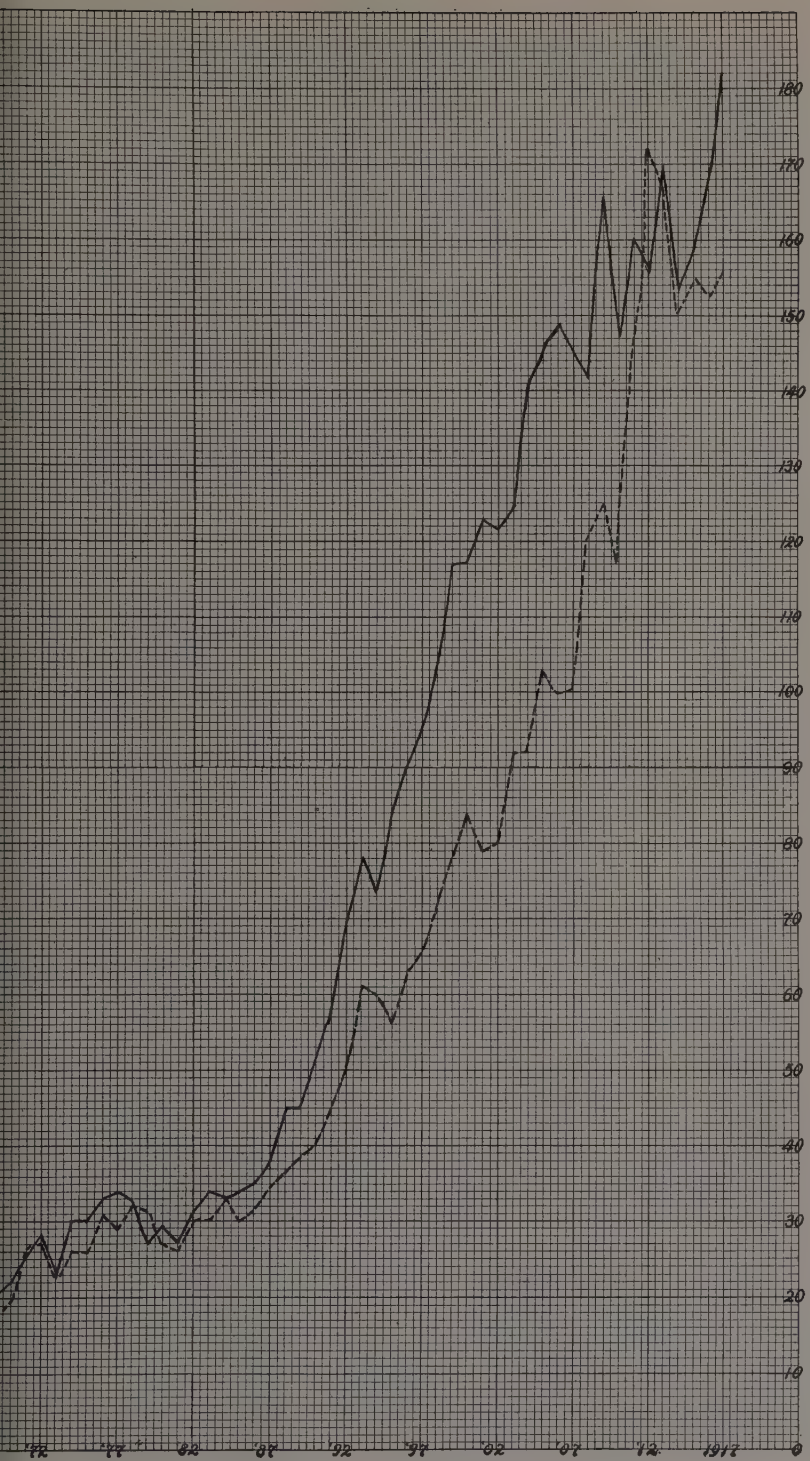
The solid line represents income, the broken li



ND EXPENDITURE, 1817–1917

liture. The amounts are in thousands of dollars

LIBRARY OF
Southern Methodist University
DALLAS, TEXAS

APPENDIX VI

FINANCES

Until the year 1829–30, the School had no finances; the Royall Professor was paid by the College, and the University Professor by tuition fees. The College must also have paid the incidental expenses, and the library was dependent on gifts and special grants. The expenditures were, however, charged to the School; and this resulted in a deficit of $2,152.44 on August 31, 1830.

The gift of the Dane Professorship in 1829 and the transfer of the Royall Professorship to the Law School at the same time, created a small endowment fund. The amount of the Royall Professorship was then $7,943.63 and is now, owing to accumulations in time of vacancy, $8,340.81; the original Dane Professorship fund was $10,000, and is now $15,750. The deficit increased for a few years until after the building of Dane Hall it amounted to $3,739.83; it then rapidly decreased, until in 1839 there was a small surplus increasing to $23,416.19 in 1844. In 1845 the enlargement of Dane Hall, which was done out of the surplus and cost $12,707.22, reduced the surplus to $15,453.98, though there was even in that year a considerable credit balance in the annual account. This fortunate condition continued for two years longer, until the surplus in 1847–48 reached the amount of $22,118.33.

After this year there was an annual deficit for fifteen successive years, with the exception of the years 1852, 1853, 1857, and 1859, when there was a very small balance. The surplus diminished to $16,462.43 in 1855–56. In that year, at the request of the Faculty and as an investment of school funds, the Brattle House, an unsuccessful hotel in Brattle Square, was purchased by the University. Much good money was wasted in this unsuccessful investment. The property was finally sold, after five years, at a loss of over $17,000. The result of this venture and of the annual deficits left the School in 1860–61 in debt to the extent of $2,531.94, which two years later became $6,043.

From this time annual deficits became rare. There were slight deficits in 1867, 1870, and 1878, and none thereafter until 1911; and there was a surplus to the credit of the School almost every year.

Meanwhile several gifts had been received. In 1840 John Foster left a fund of $2,000 for assisting professional students. The income is used for law students every third year. The amount of the fund is now $3,493.20.

In 1862 the great donation of Benjamin Bussey was received by the University; a portion of this was to go to the Law School. The Bussey Professorship was created, supported by part of the Bussey income. Eventually the professorship was endowed; the amount of the endowment now being $23,979.82. In addition the School receives one-fourth of the net income of the Bussey Trust, which in 1915–16 was $6361.06.

From the beginning of the Langdell period the School has been uniformly prosperous; and except nominally for a year while Langdell Hall was being paid for there has been no deficit in the accounts of the School.

Three additional professorships have been endowed: the Bemis Professorship of Public and International Law in 1879, with a fund of $50,000, which is now $109,646.97; the Weld Professorship in 1882, originally $90,000 and now $95,000; and the James C. Carter Professorship of General Jurisprudence, originally $100,000 and now $107,325.02.

In 1881 an effort was made to secure an endowment for the library. In that and the next year a Book Fund was secured of $47,021.55. In 1898 the Corporation, at the request of the Faculty, set aside $100,000 of the surplus to form a Library Fund. In 1914 the School received a bequest of Augusta Barnard, which has been made a fund for the purchase of books. From this bequest the amount of $106,355.51 was received. Gifts of books or for the purchase of books have been previously considered.

In 1898 Julian W. Mack, a distinguished graduate of the School, gave $4500 to constitute the James Barr Ames Prize Fund, from which each four years a medal and a prize of money are voted by the Faculty to the author of some recently published legal treatise.

Since 1903 several loan funds, scholarship funds, and prize funds have been created. The School has for many years granted a considerable number of scholarships. Until 1906 these were all merely remissions of tuition fees.

The accompanying chart shows the entire income and the entire expenditure since 1817.

APPENDIX VII

DISTINGUISHED ALUMNI OF THE SCHOOL[1]

JUDGES

Supreme Court of the United States

Benjamin Robbins Curtis.....1832
Horace Gray.....1849
Melville Weston Fuller.....1855
Henry Billings Brown.....1859
Oliver Wendell Holmes.....1866
William Henry Moody.....1877
Louis Dembitz Brandeis.....1878

Federal Circuit and District Judges

Andrew Gordon Magrath.....1834
Edward Fox.....1836
John Power Knowles.....1838
George Foster Shepley.....1839
Ogden Hoffman.....1842
John Lowell.....1845
William Gardner Choate.....1854
Edward Coke Billings.....1855
Addison Brown.....1855
George Augustus Peabody.....1855
Edward Thomas Green.....1857
Hiram Knowles.....1860
George Gray.....1863
Elmer Bragg Adams.....1867
Frederic Dodge.....1869
Andrew McConnell January Cochran.....1877
Francis Cabot Lowell.....1879
Ward McAllister, Jr.....1880

[1] The date given is the year of departure from the School.

William Schofield.....1883
Julian William Mack.....1887
Edward Terry Sanford.....1889
Victor Baynard Woolley.....1890
George Albert Carpenter.....1891
George Hutchins Bingham.....1891
Augustus Noble Hand.....1894
James Madison Morton, Jr.....1894
Learned Hand.....1896

Court of Claims

William Adams Richardson.....1846
John Davis.....1872

Judge-Advocate General

Guido Norman Lieber.....1859

Alaska[1]

Ward McAllister, Jr.....1880

Arizona

Edward Kent.....1886

California

Oscar Lovell Shafter.....1837
Marcus Cauffman Sloss.....1893

Connecticut

William Hamersley.....1859
Simeon Eben Baldwin.....1863
Augustus Hall Fenn.....1868

Delaware

William Corbit Spruance.....1854
Henry Clay Conrad.....1873
David Thomas Marvel.....1879
Charles Minot Curtis.....1881
Victor Baynard Woolley.....1890

[1] The judges of the highest courts of States and Territories are listed.

District of Columbia

Walter Smith Cox.....1847
Andrew Coyle Bradley.....1867
Charles Cleaves Cole.....1867

Georgia

Linton Stephens.....1846
Hiram Warner Hill.....1881

Hawaii

James Walker Austin.....1851
Albert Francis Judd.....1864
Alfred Stedman Hartwell.....1867
Sydney Miller Ballou.....1895

Illinois

Frank Kershner Dunn.....1875

Indiana

Charles Andrew Ray.....1854

Iowa

Chester Cicero Cole.....1848
Austin Adams.....1853

Louisiana

Edward Simon.....1847

Maine

John Andrews Peters.....1844
Leslie Colby Cornish.....1880

Maryland

George Brent.....1837
John Ritchie.....1854

Massachusetts

Caleb Cushing.....1818
Seth Ames.....1826
Benjamin Franklin Thomas.....1832

Otis Phillips Lord.....1835
Ebenezer Rockwood Hoar.....1839
Charles Devens.....1840
Marcus Morton.....1840
James Denison Colt.....1841
John Wells.....1841
Augustus Lord Soule.....1848
Charles Allen.....1849
Waldo Colburn.....1849
Horace Gray.....1849
William Crowninshield Endicott.....1850
Dwight Foster.....1850
John Lathrop.....1855
Walbridge Abner Field.....1860
James Madison Morton.....1861
James Madison Barker.....1863
John Wilkes Hammond.....1866
Oliver Wendell Holmes.....1866
William Caleb Loring.....1875
Edward Peter Pierce.....1877

Minnesota

Christopher Gore Ripley.....1843
Greenleaf Clark.....1857
George Brooks Young.....1863

Missouri

Nathaniel Holmes.....1839

Montana

Henry Nichols Blake.....1858
Hiram Knowles.....1860

Nebraska

Albert Judson Cornish.....1880
Roscoe Pound.....1890

New Hampshire

John James Gilchrist.....1831
Edmund Lambert Cushing.....1833
William Lawrence Foster.....1844

Charles Doe.....1854
Jeremiah Smith.....1861
George Hutchins Bingham.....1891

New Jersey

William Henry Vredenburgh.....1862
Frederic Adams.....1864
John Runkle Emery.....1864
Abram Quick Garretson.....1864
Job Hilliard Lippincott.....1865
Francis Joseph Swayze.....1881

New Mexico

Abraham Bergen.....1857

New York

John Clinton Gray.....1866

Ohio

Charles Cleveland Convers.....1832
Daniel Thew Wright.....1850
Moses Moorhead Granger.....1851
William Thomas Spear.....1859

Philippine Islands

Fletcher Ladd.....1887

Rhode Island

Charles Smith Bradley.....1841
Horatio Rogers.....1857
Charles Matteson.....1863
Charles Falconer Stearns.....1893

South Carolina

William Dunlap Simpson.....1845

Texas

James Hall Bell.....1846

Utah

Stephen Prince Twiss.....1851
Robert Newton Baskin.....1857

Vermont

Asa Owen Aldis.....1831

Washington

Edward Lander.....1838
Frederick Bausman.....1883

West Virginia

Okey Johnson.....1858

Wyoming

William Ware Peck.....1844

FOREIGN JUDGES

New Brunswick

Ezekiel McLeod.....1867
Albert Scott White.....1877

Nova Scotia

Hugh McDonald Henry.....1873
James Johnston Ritchie.....1877

British Columbia

Francis Brooke Gregory.....1884

International Court, Egypt

George Sherman Batcheller.....1857

PROFESSORS AND OTHER INSTRUCTORS IN LAW SCHOOLS

Atlanta Law School

Elliott Evans Cheatham.....1911
Samuel Nesbitt Evins.....1893
Thomas Ewing.....1892
Phillips Campbell McDuffie.....1909

Baldwin-Wallace

Wallace Trevor Holliday.....1908

Benton

Walter Bond Douglas.....1877

Boston University

Brooks Adams.....1872
Edmund Hatch Bennett (Dean).....1851
Horace Newton Fisher.....1859
Sanford Henry Eisner Freund.....1904
Nicholas St. John Green.....1853
Henry Childs Merwin.....1875
Charles Theodore Russell.....1839
Harvey Newton Shepard.....1872
Arthur Holbrook Wellman.....1879
Edwin Wright.....1848

Buffalo

James Parker Hall.....1897
George Smith Wardwell.....1855
Edward Payson White.....1884

University of California

James Arthur Ballentine.....1899
George Henry Boke.....1904
Alexander Marsden Kidd.....1903
Austin Tappan Wright.....1908

University of Cambridge, England

Harold Dexter Hazeltine.....1898

Cambridge Law School for Women

Edwin Hale Abbot.....1908
Joseph Henry Beale (Dean).....1887
Ernest Bancroft Conant.....1898
Manley Ottmer Hudson.....1910
Chester Alden McLain.....1915
Gustavus Hill Robinson.....1909
Whitney Hart Shepardson.....1917

Catholic University of America

Ammi Brown.....1902
Frederic Joseph de Sloovere.....1912
Walter Benedict Kennedy.....1909

Chicago Law School

George Raymond Jenkins.....1896

University of Chicago

Joseph Henry Beale (Dean).....1887
Harry Augustus Bigelow.....1899
James Parker Hall (Dean).....1897
Blewett Lee.....1888
Julian William Mack.....1887
Roscoe Pound.....1890
Clarke Butler Whittier.....1895

Cincinnati

Joseph Doddridge Brannan.....1873
Hiram David Peck.....1865
Gustavus Henry Wald.....1875
Timothy Walker.....1830

University of Colorado

Charles Macalester Campbell.....1878

Columbia University

Nathan Abbott (Gr.).....1900
George Folger Canfield.....1880
George Miller Cumming.....1877
Ralph Waldo Gifford.....1901
Henry Winthrop Hardon.....1885
John Wesley Houston.....1886
William Albert Keener (Dean).....1878
Thomas Reed Powell.....1904
Henry Pease Starbuck.....1877

Cornell University

Lucius Ward Bannister.....1895
William Lincoln Drew.....1893
Henry White Edgerton.....1914
Henry Winthrop Hardon.....1885

Creighton

William James Coad.....1903
Paul Leo Martin.....1905

Denver

Lucius Ward Bannister.....1895
George Purcell Costigan.....1894
James Benton Grant.....1912
William Edward Hutton.....1898
Cummins Ratcliffe.....1899

Dickinson

A. J. White Hutton.....1902

Fordham

Ralph Waldo Gifford.....1901
William Albert Keener.....1878

Georgetown

Seth Shepard.....1908

George Washington (Columbian)

Judson Adams Crane.....1909
Everett Fraser (Dean).....1910
Henry Craig Jones.....1906
Archibald King.....1906
William Arden Maury.....1853
Harries Arthur Mumma.....1909
John Ordronaux.....1852
Edward Sampson Thurston.....1901

Harvard

Brooks Adams.....1872
Edward Brinley Adams.....1897
John Clark Adams.....1844
James Barr Ames (Dean).....1873
Harvey Humphrey Baker.....1894
Arthur Atwood Ballantine.....1907
Lucius Ward Bannister.....1895

Charles Benjamin Barnes.....1893
Charles Maynard Barnes.....1880
Joseph Henry Beale.....1887
Edmund Hatch Bennett.....1851
Harry Augustus Bigelow.....1899
Charles Smith Bradley.....1841
Louis Dembitz Brandeis.....1878
Joseph Doddridge Brannan.....1873
Frank Brewster.....1883
James Byrne.....1882
Allan Reuben Campbell.....1902
Zechariah Chafee, Jr.....1913
Ernest Lee Conant.....1889
Benjamin Robbins Curtis.....1832
George Ticknor Curtis.....1834
Luther Stearns Cushing.....1825
Richard Henry Dana.....1840
Bancroft Gherardi Davis.....1888
Robert Gray Dodge.....1897
Wallace Brett Donham.....1901
Charles Frederick Dutch.....1905
Franklin Goodridge Fessenden.....1873
Frederick Perry Fish.....1876
Felix Frankfurter.....1906
Sanford Henry Eisner Freund.....1904
John Chipman Gray.....1862
Roland Gray.....1898
Frederick Green.....1893
Nicholas St. John Green.....1853
Arthur Dehon Hill.....1894
Samuel Hudson Hollis.....1901
Nathaniel Holmes.....1839
Oliver Wendell Holmes.....1866
Henry Howland.....1878
Francis Cleaveland Huntington.....1891
Albert Martin Kales.....1899
William Albert Keener.....1878
Christopher Columbus Langdell (Dean).....1854
John Lathrop.....1855
Chester Alden McLain.....1915
Phillip Lee Miller.....1906
Clarence Harmon Olson.....1904

John Gorham Palfrey.....1899
William Rodman Peabody.....1898
Roscoe Pound (Dean).....1890
Odin Roberts.....1891
Arthur Charles Rounds.....1890
George Rublee.....1895
Lincoln Frederick Schaub.....1906
William Schofield.....1883
Austin Wakeman Scott.....1909
Warren Abner Seavey.....1904
Jeremiah Smith.....1861
Jeremiah Smith, Jr.....1895
Rufus William Sprague.....1900
Joseph Lewis Stackpole.....1898
James Jackson Storrow.....1888
Edward Henry Strobel.....1878
Charles Sumner.....1834
Henry Walton Swift.....1874
Ezra Ripley Thayer (Dean).....1891
James Bradley Thayer.....1856
Benjamin Franklin Thomas.....1832
Eugene Wambaugh.....1880
Joseph Bangs Warner.....1874
Edward Henry Warren.....1900
Joseph Warren.....1900
Emory Washburn.....1820
Jens Iverson Westengard.....1898
Frank Beverly Williams.....1895
Samuel Williston.....1888
Bruce Wyman.....1900

Hastings

George Lewis Bell.....1912
Golden Woolfolk Bell.....1910
William Denman.....1897
William Henry Gorrill.....1899
Richard Calhoun Harrison.....1893
Robert Waite Harrison.....1898

Highland Park

Morton Eugene Weldy.....1904

University of Idaho

George David Ayers (Dean).....1882

University of Illinois

Charles Ernest Carpenter.....1908
George Luther Clark.....1902
William Lincoln Drew.....1893
Frederick Green.....1893
William Green Hale.....1906
Edward Sampson Thurston.....1901

Illinois Wesleyan

Reuben Moore Benjamin (Dean).....1855

Imperial Pei-Yang University, Tientsin

Judson Adams Crane.....1909
Richard Taylor Evans.....1909
Warren Abner Seavey.....1904
George Jarvis Thompson.....1912

Imperial University of Japan, Tokio

Alexander Tison.....1886
James Lee Kauffman.....1911

University of Indiana

Morton Carlisle Campbell.....1900
William Ellsworth Clapham.....1903
Edwin Roulette Keedy.....1906
Warren Abner Seavey.....1904

Indianapolis

William Pascoe Evans.....1911
Oscar Ross Ewing.....1913
Milton Watkins Mangus.....1909

University of Iowa

Oscar Ross Ewing.....1913
Herbert Funk Goodrich.....1914
Hugo Claude Horack.....1904

Rollin Morris Perkins (Gr.) 1916
Harry Sanger Richards 1895
Austin Wakeman Scott (Dean) 1909
Eugene Wambaugh 1880

John Marshall

William Warren Case 1883
Herbert Jacob Friedman 1900
George Glenn King 1897
Edward Thomas Lee (Dean) 1886
John Stocker Miller 1914

Keio University, Tokio

John Henry Wigmore 1887

University of Kentucky

Clinton McClarty Harbison 1909
Daniel Boone Holmes 1872
Reuben Brent Hutchcraft 1911

Lake Forest

Fletcher Barker Coffin 1898

Leland Stanford Junior University

Nathan Abbott (Gr.) (Dean) 1900
Arthur Martin Cathcart 1897
William Cullen Dennis 1901
James Parker Hall 1897
Wesley Newcomb Hohfeld 1904
Charles Andrews Huston (Gr.) (Dean) 1913
Charles Ross Lewers 1898
Clarke Butler Whittier 1895

University of Louisville

Percy Newhall Booth 1899
Robert Netherland Miller 1906

University of Maine

Bartlett Brooks 1902
John Rogers Mason 1872
William Emanuel Walz (Dean) 1899

Marquette University

Eugene LaVerne McIntyre.....1907

University of Maryland

William Caldwell Coleman.....1909
Charles Edward Phelps.....1853

Metropolis Law School

Everett Vergnies Abbot.....1889

University of Michigan

George Luther Clark.....1902
William Palmer Wells.....1854

University of Minnesota

Eldon Revare James (Gr.).....1912
Waldron Mirtalu Jerome.....1906
Edmund Morris Morgan.....1905
Edward Sampson Thurston.....1901

University of Missouri

George Luther Clark.....1902
Manley Ottmer Hudson.....1910
Eldon Revare James (Gr.).....1912
Charles William Leaphart.....1913
Alexander Martin.....1858
Gustavus Hill Robinson.....1909

University of Montana

Stephen Ives Langmaid.....1911
Charles William Leaphart.....1913
Albert Newlon Whitlock (Dean).....1911

University of Nebraska

George David Ayers.....1882
Ernest Bancroft Conant.....1898
George Purcell Costigan.....1894
Roscoe Pound (Dean).....1890

New Jersey

Oscar Mortimer Bate.....1912
Louis Sherman Headley.....1912

New York University

Lester Lawrence Callan.....1906
Augustine Derby.....1906
Thaddeus Davis Kenneson.....1883
Arthur Charles Rounds.....1890
William Belcher Whitney.....1890

University of North Dakota

Charles Ernest Carpenter.....1908
John Hart Lewis.....1900
Lauriz Vold.....1914

Northwestern University

Dwight St. John Bobb.....1903
George Purcell Costigan.....1894
Herbert Jacob Friedman.....1900
Louis May Greeley.....1884
William Browne Hale.....1902
Charles Cheney Hyde.....1898
Albert Martin Kales.....1899
Edwin Roulette Keedy.....1906
Blewett Lee.....1888
Julian William Mack.....1887
Roscoe Pound.....1890
Henry Schofield.....1890
John Henry Wigmore (Dean).....1887

Ohio State University

William Barney Cockley (Gr.).....1915
William Herbert Page (Gr.).....1914

University of Oklahoma

John Begg Cheadle (Gr.).....1916
Henry Hubbard Foster.....1908
Julien Charles Monnet (Dean).....1908
Warren Abner Seavey.....1904

University of Pennsylvania

Edwin Roulette Keedy.....1906
John Woodbridge Patton.....1867

University of the Philippines

Ernest Bancroft Conant.....1898

University of Pittsburgh

John Grier Buchanan.....1912
Judson Adams Crane.....1909
Thomas Herriott.....1872

University of Richmond

Walter Scott McNeill (Dean).....1905
Thomas Justin Moore.....1913
John Randolph Tucker.....1903

St. Louis University

Chester Harding Krum.....1865

University of South Carolina

Elbert Marion Rucker.....1850

Spokane

John Ellwood Blair.....1899
Ernest Edward Sargeant.....1903

University of Tennessee

Malcolm Malette McDermott.....1913

University of Texas

Ira Polk Hildebrand.....1902
Thomas Scott Miller.....1875

Trinity, North Carolina

Henry Grady Hedrick.....1914
Walter Samuel Lockhart.....1912

Tulane

Morton Carlisle Campbell.....1900
Stephen Ives Langmaid.....1911
Charles William Leaphart.....1913
Monte M. Lemann.....1906
St. John Perret.....1913
Gustavus Hill Robinson.....1909
Warren Abner Seavey.....1904

University of Utah

Harold Montelle Stevens.....1913

Washburn

Ernest Bancroft Conant.....1898
Thomas Amory Lee.....1913

Washington University, St. Louis

Ernest Bancroft Conant.....1898

Washington and Lee University

Merrick Dodd.....1913

Western Reserve University

Henry Bardwell Chapman.....1890
Frank Rufus Herrick.....1890
Evan Henry Hopkins.....1891
Leonard Paul Howland.....1890
Richard Inglis.....1906
Homer Hosea Johnson.....1888
Arthur Adelbert Stearns.....1881
Frank Beverly Williams.....1895

University of West Virginia

Thomas Porter Hardman.....1913
David Clyde Howard.....1914
Okey Johnson.....1858
Henry Craig Jones (Dean).....1906

University of Wisconsin

Henry Winthrop Ballantine.....1904
Frank Tilden Boesel.....1899
Eugene Allen Gilmore.....1899
Hugo Claude Horack.....1904
Eldon Revare James (Gr.).....1912
William Herbert Page (Gr.).....1914
Harry Sanger Richards (Dean).....1895

Yale

Simeon Eben Baldwin.....1863
George Henry Boke.....1904
Wesley Newcomb Hohfeld.....1904
Johnson Tuttle Platt.....1865
Thomas Walter Swan (Dean).....1903
Francis Wayland (Dean).....1850

The School has trained many statesmen of the highest rank. The following may be mentioned.

President

Rutherford Birchard Hayes.....1845

Governors of States

John Quincy Adams Brackett, Massachusetts.....1868
Alexander Hamilton Bullock, Massachusetts.....1840
Daniel Henry Chamberlain, South Carolina.....1864
William Titcomb Cobb, Maine.....1880
Rutherford Birchard Hayes, Ohio.....1845
Richard Bennett Hubbard, Texas.....1853
John Davis Long, Massachusetts.....1861
Sylvester Pennoyer, Oregon.....1854
Frank West Rollins, New Hampshire.....1881
Emory Washburn, Massachusetts.....1820
Joseph Hartwell Williams, Maine.....1836
Augustus Everett Willson, Kentucky.....1870
Roger Wolcott, Massachusetts.....1871

United States Senators

Samuel Greene Arnold, Rhode Island.....1845
William Eaton Chandler, New Hampshire.....1855
Rufus Choate, Massachusetts.....1820

James Biddle Eustis, Louisiana.....1854
William Maxwell Evarts, New York.....1839
George Gray, Delaware.....1863
Anthony Higgins, Delaware.....1863
George Frisbie Hoar, Massachusetts.....1849
Henry Cabot Lodge, Massachusetts.....1874
William Adams Richardson, Illinois.....1846
William Paine Sheffield, Rhode Island.....1844
Charles Sumner, Massachusetts.....1834
Charles Henry Van Wyck, Nebraska.....1845
William Pinkney Whyte, Maryland.....1845
Edward Oliver Wolcott, Colorado.....1871

Canadian Senators

Henry Adolphus Newman Kaulbach, Nova Scotia.....1857
Lawrence Geoffrey Power, Nova Scotia.....1866

Japanese House of Peers

Jentaro Kanéko.....1878
Tanetaro Mégata.....1874

United States Cabinet Officers

Charles Joseph Bonaparte, *Navy*, *Atty. Gen*.....1874
William Eaton Chandler, *Navy*.....1855
Caleb Cushing, *Atty. Gen*.....1818
Charles Devens, *Atty. Gen*.....1840
William Crowinshield Endicott, *War*.....1850
William Maxwell Evarts, *State*.....1839
Charles Fairchild, *Treasury*.....1866
Ebenezer Rockwood Hoar, *Atty. Gen*.....1839
Robert Todd Lincoln, *War*.....1865
John Davis Long, *Navy*.....1861
William Henry Moody, *Atty. Gen*.....1877
Richard Olney, *Atty. Gen.*, *State*.....1858
William Adams Richardson, *Treasury*.....1846
Henry Lewis Stimson, *War*.....1890
Elihu Benjamin Washburne, *State*.....1840

Canadian Cabinet

Charles Hibbert Tupper.....1876

Japanese Cabinet

Jutaro Komura.....1878

Siamese General Adviser

Edward Henry Strobel.....1878
Jens Iverson Westengard.....1898
Wolcott Homer Pitkin (*Assistant and Acting General Adviser*).1906

Foreign Ambassadors and Ministers

Christopher Columbus Andrews.....1849
Anson Burlingame.....1846
John Ridgely Carter.....1888
Joseph Hodges Choate.....1854
Henry Percival Dodge.....1895
James Biddle Eustis.....1854
Nicholas Fish.....1869
Robert Stockwell Reynolds Hitt.....1901
Wickham Hoffman.....1847
Richard Bennett Hubbard.....1853
Kentaro Kanéko.....1878
Jutaro Komura.....1878
Sinichiro Kurino.....1881
Alexander Robert Lawton.....1842
Robert Todd Lincoln.....1865
James Russell Lowell.....1840
John Lothrop Motley.....1837
Stanford Newel.....1864
James Rudolph Partridge.....1843
William Preston.....1838
Thomas Russell.....1849
Frederic Jesup Stimson.....1878
Edward Henry Strobel.....1878
Edwin Holland Terrell.....1873
William Widgery Thomas.....1866
John Davis Washburn.....1856
Elihu Benjamin Washburne.....1840

General Officers in the Civil War

Charles Devens.....1840
Manning Ferguson Force.....1848
States Rights Gist.....1852

George Henry Gordon.....1856
Rutherford Birchard Hayes.....1845
Bradley Tyler Johnson.....1851
Alexander Robert Lawton.....1842
Elwell Stephen Otis.....1860
Francis William Winthrop Palfrey.....1853

Authors

George Bancroft.....1841
John Fiske.....1865
Manning Ferguson Force.....1848
Robert Grant.....1879
Adams Sherman Hill.....1855
Oliver Wendell Holmes.....1830
Henry James.....1863
Abbott Lawrence Lowell.....1879
James Russell Lowell.....1840
John Lothrop Motley.....1837
Wendell Phillips.....1833
John Codman Ropes.....1859
George Washburn Smalley.....1855
Owen Wister.....1888

Legal Authors

Benjamin Vaughan Abbott.....1851
James Barr Ames.....1873
Clement Bates.....1869
Joseph Henry Beale.....1887
George Bemis.....1839
Peleg Whitman Chandler.....1836
George Ticknor Curtis.....1834
Luther Stearns Cushing.....1825
Richard Henry Dana.....1840
Amasa Mason Eaton.....1878
Arthur Jerome Eddy.....1878
John Chipman Gray.....1862
Charles Edward Grinnell.....1876
Francis Hilliard.....1826
Oliver Wendell Holmes.....1866
Leonard Augustus Jones.....1858
William Albert Keener.....1878

Christopher Columbus Langdell.....1854
Abbott Lawrence Lowell.....1879
John Lowell.....1845
Arthur Webster Machen.....1899
George Minot.....1838
Victor Morawetz.....1878
Nathan Newmark.....1875
Edward Lillie Pierce.....1852
Roscoe Pound.....1890
Carman Fitz Randolph.....1879
Conrad Reno.....1882
Theodore Sedgwick.....1830
Frederic Jesup Stimson.....1878
James Bradley Thayer.....1856
Walter Checkley Tiffany.....1882
Jeremiah Travis.....1866
Timothy Walker.....1830
David Thompson Watson.....1866
Samuel Charles Wiel.....1903
John Henry Wigmore.....1887
Samuel Williston.....1888

Librarians

Edward Brinley Adams.....1897
Charles Frederick Dorr Belden.....1898
Mellen Chamberlain.....1849
Herbert Putnam.....1892

Presidents of the American Bar Association

Simeon Eben Baldwin.....1863
James Coolidge Carter.....1853
Joseph Hodges Choate.....1854
Alexander Robert Lawton.....1842
Francis Rawle.....1871
Thomas Jenkins Semmes.....1844
Moorfield Storey.....1867

Among the many leaders of the bar who have studied at the School the following may be noticed, without mention of the living:

John Lambert Cadwalader.....1859
Bernard Carter.....1855
James Coolidge Carter.....1853

Joseph Hodges Choate.....1854
Rufus Choate.....1820
David Cross.....1843
Dorman Bridgman Eaton.....1850
William Maxwell Evarts.....1839
George Silsbee Hale.....1846
George Hoadly.....1845
David Brainerd Lyman.....1866
Henry William Paine.....1832
William Goodwin Russell.....1845

LIBRARY
SOUTHERN METHODIST
UNIVERSITY

INDEX OF TOPICS AND PLACES

NOTE. — When there are several references on a topic, the most important passages are indicated by heavy type. Illustrations are indicated by italics. All references to the Library and to books will be found under "Library." Combinations of words containing "law" or "legal" will be found under L. The Law Schools which have had alumni of Harvard Law School as teachers are not indexed here, as they are arranged alphabetically in Appendix VII.

ADMINISTRATIVE LAW, 77, 121, 132, 164 ff., 201.
Admiralty and Shipping, 30, 53, 75, 76, 204, 214, 236, 240, 247, 264.
Admission, requirements for, 23, 28, 31, 32, 45, 46, 47–52, 55, 182; *see* Examinations for entrance.
Advisers, Board of Student, 60, 132, 146.
Agency, 24, 75 ff., 256.
Alumni, distinguished, 16, 379–401.
Alumni Associations, *see* Story, Harvard Law, and Harvard Law School Associations.
Alumni, loyalty to the School, 153; *see* Harvard Law School Association.
Ambassadors among alumni, 398.
American Jurist, 92, 195.
American Law Review, 23, 140, 206, 214, 220, 248.
Ames Competition, 60, 134, 137, 146, 147–151, 347.
Ames Prize Fund, James Barr, 378.
Apprenticeship, legal education by, 64. *See* Law offices.
Arbitration, 24, 75, 203, 237.
Assembly of students, *see* Parliament.
Assistants, student, 21, 136, 226.
Athletics and walking, 55, *152*, 153.
Attendance of students, 5, 7, 10, 14, 19, 22, 27, 28, 39, 44, 45, 46, 48, 56, 62, 173, 182, *344*.
Austin Hall, 40, *40*, 56, *80*, 103, *106*, 122 ff., *128*, *180*, 212, *238*.
Authors among alumni, 399.
Autographs, 125 ff.

BAILMENTS, 75, 76.
Bankruptcy, 75 ff.
Bar, leaders of the, among alumni, 400.
Bar Association, Presidents of the American, 400.
Bar Associations and the School, 185, 187, 269, 281.
Beale Law Club, 149.
Bemis Professorship of Public and International Law, 53, 263, 289, 378.
Bibliographies 290–376.
Bills and Notes 75 ff. 182, 200, 228, 240.
"Blackacre," 153, 206.
Blackstone's Commentaries, course in, 65, 74 ff.
Boston Daily Advertiser, 86.
Boston University Law School, 26, 39, 196, 205, 215.
Brattle House, 96, 377.
Brattle Street 153.
Briefs and brief-making, 133, 144, 149, 283.
Bryce, James, Law Club, 149, 150.
Bussey Professorship of Law, 284, 288, 378.
Byrne Professorship of Administrative Law, 201.

CABINET MEMBERS among alumni, 397.
Carriers, 76, 287; *see* Public Service Companies.
Carter Professorship of General Jurisprudence, 171, 201, 289, 378.
Case books, 22, 34, **80–83,** 101, 176, 181, 184, 187, 200, 211, **228–231, 371.**
Case-system, **34–39,** 42, 47, **65–67,** 97, 124, 130, 168, 176, 198, 199, 211, 222, **228–232,** 236, **365–371;** *see also* Instruction, Methods of.
Catalogues of the School, 22, **344.**
Catalogues, Quinquennial, 138, 156, 157 344.
Cheer, School, 153.
Chicago University Law School, 59, 60.
Choate Law Club, 149.
Cincinnati University School of Law, 54, 200.
Civil Law, 17, 53, 75 ff., 181, 203, 205, 212, 240, **373–376;** *see under* Library.
Class secretaries and reports, 138, 152, **349.**
Class Smokers and dinners, 135.
Classes, division of School into, 13, 29, 75.
Clubs, *see* Law Clubs, Dining Clubs.
College graduates in the School, 5, 23, 31, 32, 39, 45, **47–51,** 135, **138,** 182.
College House Number Two, **4,** *8,* 11, 87.
Columbia College, early Law professorship, 2.
Columbia Jurist, 139, 140.
Columbia University Law School, 36, 42, 82, 178, 222.
"Common Law of the School," 63; *see* Cosmopolitanism.
Commencement speaker from the School, 32.
Comparative Law, 53, 115, 163, 167 ff., 284.
Conflict of Laws, **75** ff., 158, 170, 180, 287.
Constitutional Law, 17, 39, 41, **74** *seq.,* 132, 156, 170, 204, **209, 280,** 284.
Contracts, 24, 34, **75** ff., 169, 204, 228, 230, *234,* 254, 287.
Corporation of Harvard University, 2 ff., 7, 8, 10, 23, 26, 29, 40, 86 ff.; *see* Faculty, relations with governing bodies.
Corporations, **75** ff., 198, 256.
Cosmopolitanism of students and teaching, 63, **67–69,** 138, 238.
Course, length of, 5, 13, 24, 28, 29, 32, 46; *see* Graduate work.
Criminal Law, 39, 42, 53, **75** ff., 132, **170,** 180, 196, 197, 202, 203, 205, 214, 254.
Criminology, 168, 170; *see* Penal Legislation.
Currency, 75.
Curriculum, **15,** 18, 24, 28, 29, 44, 46, **73–80, 167–170,** 271, **373–376;** first year, 45, 76.

DAMAGES, 76, 200.
Dane Hall, **11, 16,** *16,* **40,** *74, 90,* 91, *94, 98,* 102, *102, 164,* **377.**
Dane Professorship of Law, 10, 288, 377.
Dean, **27,** 46, 58, 60, 62, 182–185, 228, 235, 270, 274.
Deeds, 221, 237, 286; *see* Property.
Degree of LL.B., requirements in the School, 23, 24, 27, 28, 32, 46, 49–51.
Degree of S. J. D., 57, 77, 171; *see* Graduate work.
Dining clubs, 60, 138.
Discussion of law in the School, 17, 63, 129–131, 132, 180, 226.
Domestic Relations, 75.

ELECTIVE COURSES, 44, 46.
Endowed professorships, 177, 377.
Endowment, need of larger, 114–121, 172–174; *see* Finances.
Equity, 53, **74** ff., 198, 204, 233, **234.**
Evidence, 24, 39, **75** ff., 200, **209,** 218, 268, **277–279.**
Examinations, written, 24, 27, 28, 29, 45, 46, 148, 183, 228, 274, **345;** for entrance, 32, 45, **345.**

FACULTIES, separate in Harvard University, 3, 6, 27.
Faculty, **19, 33, 36–39,** *52,* 63, *172,* 175–343, 352–364 *passim;* meetings and powers, 22, 27, 183; relations with governing bodies of the University, 8, 17, 18, 23, 27, 28, 32, 46, 55, 58,

177, 203, 228, 237–239; size, 46, 135, **170**; subjects taught, **77–80**, 179. *See also* Law teacher; Students, relation to professors; and the various professorships by name.
Federal Procedure, *see* United States Courts.
Fiction, the School in, 358 note.
Finances, 46, 57, 96, 119, **172–174, 377**, *377*.
First year curriculum, *see* Curriculum.
Fourth year course, *see* Graduate work.
"Foxcroft," 257.
Fresh Pond, 153.

GERMAN CIVIL CODE, 53, 240.
German influence on founding of the School, 3.
Gifts to the School, 2, 10, 11, 39, 40, 87, 88, 91, 108, 111 ff., 124, 125, 156, 157, 173, 188, 192, 377.
Governors of States among alumni, 396.
Graduate work, **57**, 59, **77**, 115–117, **167–172, 373–376**.
Gray, George, Law Club, 150.
Great American Lawyers, extracts from, 223 ff., 276 ff.

HARVARD ALUMNI BULLETIN, 352.
Harvard College, *164*.
Harvard College library, 86, 87, 89.
Harvard College seniors, 47, 51.
Harvard Coöperative Society building, 4.
Harvard Graduates Magazine, 189, 352.
Harvard Law Association, 154.
Harvard Law Review, 41, 63, **134**, 137, **139–143**, 145, 152, 157, 200, **348**.
Harvard Law School, bibliography, 344–364; founded, 3, 242; general conditions, 7 ff., 15 ff., 21–25, 33, 39, 41, 58, 62, 135.
Harvard Law School Association, 41, 124, 140, **154–161**, 192, 200, 201, 220, 349–351.

ILLINOIS, University of, Law School, 214.
Instruction, Methods of, **34–39**, 44, 63, **64–67**.
Stearns and I. Parker, 5, 73; Story Ashmun, and Greenleaf, 10, 12 ff., 73; Parker, Parsons, and Washburn, 19; Ames, 37, 178; Ashmun, 194; Bradley, 198; Brannan, 200; Gray, 38, 210–213, 216; Greenleaf, 216; Keener, 41, 222; Langdell, 34–37, 232; J. Parker, 246–246; Smith, 256; Story, 262; E. R. Thayer, 271–274; J. B. Thayer, 37, 280; Washburn, 286.
Graduate work, 77, 167–170.
Size of class and division into sections, 43, 44, 49, 53, 135, 170. *See also* Case book, Case system, Cosmopolitanism, Curriculum, Law teacher, Lectures, Text-books.
Instructors and Lecturers, 13, 15, 17, 18, 20, 30, 31, 39, 43, 52–54, 61, 62.
Insurance, 75 ff., 220.
International Law, 20, 41, 53, 75 ff., 204, 263, 264, 284; *see also under* Library.
Iowa, State University of, Law School, 36, 43, 60.
Irrigation, *see* Water Rights.

JANITOR 17, 23, 98.
Judges among alumni, 379, 384; *see also* United States Supreme Court.
Jurisprudence, 76 ff., 168 ff., 201, 207, **373–376**.

KENT LAW CLUB, 150.
Kent's Commentaries, course in, 74 ff.

LANGDELL HALL, *56*, **57**, 107, 119, 124, 125, 146, 151, *152*, 153, 188, 236, **378**.
Langdell Professorship of Law, 43, 236, **289**.
Law, influence of the School upon the development of, 23, 37, 59, 116–118, 120, 132, 136, **162–174**, 179, 182, 231, 270, 271, 280.
Law, Origin; Growth, and Function of, James C. Carter, 201.
Law and Opinion in the Nineteenth Century, A. V. Dicey, 53, 204.
Law Clubs, 60, **133**, 135 ff., **143–146**, 147–151, **347**.

Law office training, relation to early law schools, 1, 5, 7, 8, 9, 15, 67, 89.
Law reform, courses in, 77, 167 ff.
Law Reporter, 223.
Law schools and law professorships, early, 1, 2, 6, 7, 10.
Law schools, other, relations with Harvard Law School, 60, 82, 179, 185.
Law teachers, among alumni, 179, 186, **384–396**; professional, and practice, 6, *26*, **30**, 33, **69–73**, 176, 207, 217, 221, 248, 270, **372**; range of subjects, 80; training of, 179, 186, *see* Graduate work; their influence upon law, **163–167**, 182, **372–376**.
Lecture rooms, 5, 11, 16, *74*, *80*.
Lecturers, *see* Instructors and Lecturers.
Lectures, legal education by, 5, 12, 19, 24, 38, 64–66, 73, 198, 210, 241, 242, 282.
Legal Aid Bureau, 60, 85, 135, 138, **151, 348.**
Legal authors, 399.
Legal education, bibliography, 365–376; early American, 1, 2; foreign, 64, 65.
Legal Ethics, 267.
Legal History, 77, 180, 184, 188.
Liability, 79.
Librarians among alumni, 400.
Library, general references, 5, 6, 11, 16, 21, 23, 30, 40, 46, 56, 59, 61, **86–121**, *94*, *98*, *106*, *180*, 181, 184, 270.
Binding, 105; case system, relation to, 97, 100, 106; catalogues, 88, 91, 94, **118**, 185, **345–347**; collating, 105; duplicates, 99, 101; endowment, present and needed, 40, **114–121**, 172, **378**; expenditure for books, 87, 90 ff., 106, 119, 172; investment of surplus in books, 184; librarian, 11, 30, 61, *86*, 91, 96 ff., 103, 113, *120*, 156, 185, **189–192**; librarians, student, 96 ff., 226; losses and wear, 88, 96, 101, 102; management, 88, 96–100, 102–105; number of books, 46, 89 ff., 106, **109–111**, 113, 172, 189; purchase of books, methods, 101, 104, 113, 190–192; reading room, *see* Reading room in library; text-books, free, 95, 97, 99; working library, 98.
Special collections and books: Bar Association Proceedings, 107; Blackstone's Commentaries, editions of, 192; Civil Law, 21, 87, 91–93, 111, 118, 181; Colonial legislation and reports, British, 110, 111, 192; Dunn collection of early English law books and manuscripts, 108, 112, 346; International law, *see* Olivart *below;* Livermore Library, 91, 112; Olivart collection of International law, **107**, 111, 120, 346; Pennsylvania statutes, early, 190; Registrum Brevium of 1531, 191; Rota Romana, 112; Story library, 11, 90; South American law books, 108; United States Supreme Court Records, 112; Year-books, 108, 192.
Litchfield Law School, 1, 2, 5, 6, 68.
LL.B., *see* Degree of LL.B.
Loan Fund, 29, 183, 188, 378.
Local law, not taught, **68**; *but see* Practice courses.
Lowell Law Club, 150.

MARSHALL LAW CLUB, 145, 150.
Massachusetts Practice, *see* Practice courses.
Military service, students in, 54.
Mining Law, 53, 77, 204, 221.
Moot courts, **5**, 6, 22, 77, 136, 144, 145, 202, 248, 262, **347.**
Mortgages, 76, 233, 287.
Municipal Corporations, 76.

NEBRASKA University Law School, 59.
New York Practice, *see* Practice Courses.
Northampton Law School, 10, 193.
Northwestern University Law School, 36, 59.
Notebooks of students, 131.

OFFICES of the professors, 11, 17, 56.
Overseers, Board of, Harvard University, 22, 87, 94 ff., 200, 248, 345; *see* Faculty, relations to the governing bodies of the University.

PARLIAMENT of students, 22, 136, 137, 239.
Parliamentary Law, 17, 75, 203.
Partnership, **75** ff., 184, 196, 198, 200, 228, 240.
Patent Law, 44, 61, 77, 204, 205, 254, 256, 258.
Penal Legislation and Administration, 77, 167 ff.
Pennsylvania, University of, early law professorship, 2.
Persons, **76** ff., 255, 256.
Phillips Brooks House, Law School Society of, 138, 151, 348.
"Pinkacre," 206 note.
Pleading, 59, 61, **75** ff., 255.
Politics and Harvard Law School, 18, 20, 22, 237–239, 249–251, 282.
Portraits and Prints, **122–127,** 157, 192, 258.
Pow-wow Law Club, 145.
Practice, success of students in, 66, 69, 136, **152,** 176, 269, **379–401.**
Practice courses, 43, 52, 77, **83,** 143, 157, 201, 202, 221, 240, 254, 256, 270; *see also* United States Courts.
Practice courts, 84, 136, 143.
President of Harvard University, influence upon the School, 3, 8, 25, 28, 33, 177, 235, 285.
President of the United States, 123, 396.
Private International Law, 77; *see* Conflict of Laws.
Prizes, 21, 29, 147–151, 156, 378.
Procedural Law, 77, 167; *see* Pleading.
Property, 52, 53, 59, **74** ff., 180, 203, 204, 207, 214, 220, 221, 286, 287.
Public Service Companies, 76, 132, 240, 287.

QUASI-CONTRACTS, 76, 182, 222, 234, 255.

READING ROOM in library, 11, 16, 17, *94,* 99, 102, 103, 106, *106,* 212.
Reading room, students', 137.
Reports of President and Dean, **345.**
Research in law schools, **164–170,** 180–182; *see* Graduate work.
Restraint of Trade, 76, 221.
Review of courses, 131, **137.**
Roman Law, *see* Civil Law.
Royall Professorship of Law, **2,** 3, 8, **241, 288,** 377.

SALES, 39, **75** ff., 196, 237, 267.
Scholarships, 29, 30, 378.
Sculpture, 126.
Second College House, *see* College House No. 2.
Secretary of School, **55,** 62, *120,* 152.
Senators of the United States etc. among alumni, 396.
Shipping, *see* Admiralty.
Siamese General Advisers, 54, 264, 398.
S. J. D., *see* Degree of S. J. D. *and* Graduate work.
Special students without a college degree, **49–51,** 182.
Statutes, 77, 169; *see* Penal Legislation, Procedural Reform, etc.
Story Association, **20,** 154.
Story Professorship of Law, 31, 288.
Student life and activities, 60, **128–138** ff.
Students, relation to professors, 11, 17, 19, 60, 183, 212, 274, 285, 286.
Suretyship, 76, 196, 233, 287.

TEXT-BOOKS and treatises, use of, in legal education, 19, 38, **65,** 73, 196; as work of law teachers, 10, 22, 68, 136, **163–166,** 207, 234, 253, 257, 260–262, 272, 277–279, **290–343.**
Thayer Law Club, 150.
Thayer Teaching Fellowship, 62, 239.
Torts, **24, 29,** 39, 41, 62, **76** ff., **132, 167,** 169, **214,** 221, 236, 239, 255, 256.
Trusts, **76,** 178, 182, 184.

UNIFORM ACTS, 69, 182.
United States Courts, Jurisdiction and Practice of, 30, 75 ff., 203, 204, 240.
United States Supreme Court judges connected with the School, *12, 112, 116, 132, 136, 140, 146,* 200, 202, *204,* 220, 258, **379.**
University Professor of Law, **4,** 17, 18, 87, 202, 237, **284,** 377.

WAR, Civil, 19, 20, 23, 398; European, International Law Problems of the, 77; Spanish, students enlisting, 54.
Water Rights, 53, 61, 77, 196, 204, 221.
Weld Professorship of Law, 39, 289, 378.
Westengard Law Club, 150.
Western Reserve University Law School, 43, 287.
William and Mary College, early Law professorship, 2.
Williston Law Club, 150.
Wills, 30, 75 ff., 196, 214, 237, 283.
Witenagemot Law Club, 150.
Women, admission to the School, 55.
Writs of Error, 75.
Wyman, Bruce, Law Club, 149.

YEAR-BOOKS, course in 77; *see* Library.

LIBRARY OF
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INDEX OF PERSONS

[Italic figures indicate portrait pages; black-type figures indicate the more important references.]

ABBOT, E. V., 156
Accursius, 65
Adams, Brooks, 39, 175, **290**
Adams, Edward B., 52, 61, *120*
Adams, John C., 15, **175**
Adams, Samuel, 126
Allen, Frederick H., 17, **175**
Allen, Mr. Justice Charles, 125
Alvord, James C., 13, **175**
Amberg, Julius H., 150
Ames, James B., 26, 30, 33, 35, **37**, 41, *46*, 47, 48, *52*, 58, 59, 60, 63, 71, 78, 79, 81, 82, 106, 107, 113, 114, 124, 125, 129, 140, 147, 158, **175–189**, *176*, *180*, 288, **290–293**, **358–359**
Ames, Mrs. James B., 60, 147
Ames, Joseph, 123
Ames, Richard, 55, *120*, 152
Angell, Montgomery B., 150
Arnold, John H., 30, 61, *86*, 113, 124, 156, **189–192**
Ashmun, John H., 10, 11, 12, 13, 65, 73, 90, 91, **192–196**, *192*, 288, **293**, **354**
Auchmuty, R., 88
Austin, Edward, 40, 103, 173

BAKER, HARVEY H., 52, **196**
Ballantine, Arthur A., 52, **196**
Bannister, Lucius W., 61, **196**, **293**
Barnard, James M., 112
Barnard, Mrs. James M., 112, 113
Barnes, Charles B., 52, **196**
Barnes, Charles M., 39, **196**
Bartolozzi, 125
Bartolus, 65
Beale, Joseph H., 42, 43, *52*, 60, 78, 79, 81, 82, *172*, 288, 289, **293–297**
Beaman, C. C., 156
Belden, Charles F. D., 55
Belknap, Chauncey, 147, 150
Bemis, George, 53
Benjamin, Judah P., 126
Bennett, Edmund H., 30, **196–197**, **297**
Bennett, Lawrence G., 147
Benson, Judge, 1
Bentham, Jeremy, 126
Bigelow, Harry A., 52, **197**, 298
Binney, Horace, 72
Blackstone, 10, 65, 74
Blake, Judge, 21
Boone, Daniel, 123
Bourne, Shearjashub, 1
Bracton, 93
Bradley, Charles S., 30, 33, *196*, **197–200**, 288, **298**, **359**
Branch, Claude R., 147
Brandeis, Louis D., 39, *140*, 154, 155, **200**, **298**
Brandt, H. J., 149
Brannan, Joseph D., *52*, 54, 62, 79, *172*, **200**, *200*, 288, **298**
Brewster, Frank, 44, **201**
Bridgman, 125
Browne, Mr. Justice, 21, *132*
Bryce, James, 163
Buller, Mr. Justice, 127
Bundy, Harvey H., 147
Burns, Anthony, 18
Byrne, James, 44, **201**, **299**

CADWALADER, JOHN L., 112
Campbell, Allan R., 52, **202**
Carter, James C., 41, 155, *156*, 158, 161, **201**, **299**
Cathcart, E., 92
Chafee, Zechariah, Jr., 62, 147, *172*, **299**
Chaplin, Heman W., 42, 82, **202**, **299–300**
Chase, William M., 123
Chipman, Hon. Daniel, 88
Choate, Joseph H., 21, 24, 158, *160*
Choate, Rufus, 16, 20

Coke, Sir Edward, 36, 125, 129, 164
Conant, Ernest L., 44, **202**
Coxe, Brinton, 112
Coxe, Edward J. D., 112
Curtis, Benjamin R., 16, 30, 111, 126, 154, **202–203**, *204*, **300**
Curtis, George T., **203**
Cushing, Caleb, 88
Cushing, Luther S., 17, **203**, **300**

DAILY, F. L., 150
Dana, Richard Henry, 12, 14, 16, 20, **203**, **300**
Dane, Nathan, 9, 10, 11, *68*, 69, 122, 126, 173
Davis, Judge, 1
Davis, Bancroft G., 53, **204**
Davis, Hon. Charles T., 150
De Tocqueville, Alexis, 163
Dexter, Franklin, **17**, **204**
Dicey, Alfred V., 53, 110, 158, **204**, **300–301**
Dixwell, E. S., 176
Dodge, Robert G., 52, **204**
Dodge, Hon. Frederic, 149, 151
Donham, Wallace B., 52, **204**
Dunbar, William H., 124
Dutch, Charles F., **53**, **204**

ELIOT, PRESIDENT, 25, 28, 29, 30, 31, 40, 41, 71, 103
Evarts, William M., 16

FARRAR, PRESIDENT, 4
Feke, Robert, 122
Fessenden, Franklin G., 35, 39, **204–205**, 301
Fillmore, President, 126
Finch, Gerard B., 82
Fischer, Frederic L., 55
Fischer, Herman A., 55
Fish, Frederick P., 44, **205**, **301**
Follen, Charles, **205**, **301**
Fox, Austen G., 35
Frankfurter, Felix, 61, *172*, **301–302**, **362**
Freund, Sanford H. E., 52, **205**
Fuller, Chief Justice, *136*, 158

GAIUS, 92
Gaugengigl, I. M., 124
Gilmore, Eugene A., 55
Glanvil, 93
Gore, Hon. Christopher, 88, 89, 112
Grant, James B., 147
Gray, John C., *30*, 31, 33, 36, **38**, *52*, 58, 61, 63, 65, 78, 79, 82, 124, 126, 153, 159, **205–214**, *206*, *212*, 288, **302–303**, **359–360**
Gray, Mr. Justice, *112*, 112
Gray, Roland, 59, 61, **214**, **303**
Green, Frederick, 52, **214**, **303**
Green, Nicholas St. John, 30, **214–215**, **303–304**
Greenleaf, Simon, 10, 13, 14, 15, 16, 19, 21, 65, 70, 73, 74, 93, 94, 95, 104, 123, 173, **215–219**, *216*, 288, **304–305**, **354**
Greenleaf, W. H., 149
Greenough, Charles P., 127
Gridley, Jeremiah, 88

HAND, LEARNED, 112
Hand, Samuel, 112
Harding, Chester, 123
Hay, John, 126
Hayes, Rutherford B., 16, 123
Healey, G. P. A., 123
Hill, Arthur D., 62, 149, *172*, **305–306**
Hillard, George S., 154
Hoar, Ebenezer R., 12, 16, 41
Hoar, Senator, 17
Holbein, 125, 126
Hollis, Samuel H., 52, **219**, **306**
Holmes, Nathaniel, 27, **220**, 288
Holmes, Oliver W., Jr., 30, 39, 40, 41, 112, *116*, 155, 156, **220–221**, 289, **306–307**
Holt, Lord Chief Justice, 125
Howe, Judge, 10
Howe, John, 87, 89, 111
Howland, Henry, 39, **221**
Huffcut, Ernest W., 83
Hughes, Charles J., 53, **221**
Huntington, Francis C., 52, **221**

JACKSON, JUDGE, 88, 90
Jarvis, John W., 123, 126
Johnson, Homer H., 42
Justinian, 63

KALES, ALBERT M., 62, **221–222**, **307–310**
Keasbey, Edward I., 35
Keener, William A., 36, 40, 41, 42, 43, 81, 82, *222*, **222–223**, 288, **310**
Kent, James, 1, 2, 162
Kent, William, 15, 73, 74, **223**, 288, **310**
Kirkland, President, 3, 8
Kneller, Sir Godfrey, 125

LANGDELL, CHRISTOPHER C., 10, 22, 25, 26, **27**, **28**, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 45, **46**, **47**, 48, 49 53, 55, 58, 61, 62, 63, 65, 66, 72, 75, 78, 79, 80, 81, 82, 95, 97, 103, 113, 114, 124, 157, 158, 168, 170, 173, 176, 177, **223–236**, 288, **310–311**, **360**
Langdell, Mrs. Christopher C., 113
Lathrop, John, 30, **236**
Leake, Stephen M., 82
Lee, Blewett, 42
Letchworth, Edward H., 152
Lichtenstein, Dr., 109
Lightner, M. C., 149
Lincoln, Abraham, 48, 49
Livermore, Samuel, 91, 112
Lockwood, Robert W., 124
Loring, Edward G., 18, 20, **236–239**
Loring, Hon. William C., 150, 151
Lowell, James R., 16

McCARTHY, JOHN, *120*
McDermott, M. M., 149
Mack, Julian W., 42, 139
McKelvey, J. J., 139
McLain, Chester A., 62, 83, **239**
Mansfield, Lord, 125, 127, 128
Marshall, John, 123
Mather, Cotton, 86
Mellen, Chief Justice, 1
Miller, Philip L., 52, **240**
Mitchell, O. R., 156
Montgomery, Spencer B., 147
Moody, William H., *146*
Moore, T. Justin, 149
Morse, Samuel F. B., 123
Morse, Robert M., 155
Morton, Hon. James M., 150
Myers, James J., 35
Myers, Jeff, 149

NEITZEL, WALTER, 53, **240**, **312**
Nottingham, Lord, 125
Nutter, George R., 124, 140

OLIVART, MARQUIS DE, 107, 120
Olson, Clarence H., 52, **240**
Otis, James, 88

PAGE, WILLIAM, 122, 123
Palfrey, John G., 52, **240**, **312**
Parker, Isaac, *2*, 3, 4, 6, 7, 8, 9, **240–243**, 288, **312**, **352**
Parker, Joel, 15, 18, 19, *20*, 21, 22, 23, 25, 28, 34, 66, 74, 78, 123, **243–251**, 288, **312–313**, **356**
Parsons, Theophilus, 10, 16, 17, 18, 19, 20, 21, 22, *24*, 25, 34, 66, 74, 78, 123, 136, 173, **252–254**, 288, **313–314**, **356**
Pattee, William S., 83
Peabody, William R., 52, **254**
Phelps, Judge, 21
Pollock, Sir Frederick, 108, 158
Pound, Roscoe, 58, 62, 132, 160, *172*, 288, 289, **314–320**, **363**
Putnam, Henry W., 154

QUINCY, JOSIAH, 8, 91

RAND, WILLIAM, JR., 124
Randall, Clarence B., 150
Rawle, Francis, 35, 107
Reeve, Judge Tapping, 1, 6
Reis, Alvin C., 150
Richardson, H. H., 40
Rieser, Leonard M., 150
Rinehart, M. V., 150
Roberts, Odin B., 61, **254**, **320**
Ropes, John C., 154
Rounds, Arthur C., 52, **254**
Royall, Isaac, 2, 122
Rublee, George, 52, **254–255**

SANFORD, EDWARD T., 42
Savigny, 92
Schaub, Lincoln F., 52, **255**
Schofield, William, 4, 154, **255**, **320–321**
Scott, Austin W., 59, 60, 61, 62, *172*, **321**, **363**
Scraggs, H. A., 150
Seavey, Warren A., 61, **255**, **321**
Sewall, Judge, 41
Sewall, Samuel, 88
Shattuck, Charles E., 124, 156
Sheldon, Henry N., 149
Simmons, 124
Smith, Chief Justice, 1
Smith, Jeremiah, 33, 43, *52*, 58, 63, 79, 82, 124, 125, 159, *254*, **255–256**, 288, **321–323**
Smith, Jeremiah, Jr., 52, **256**
Snow, Freeman, 83
Snow, Conrad E., 150
Sprague, Rufus W., 52, **256**
Stackpole, Joseph L., 52, **256**
Stearns, Asahel, 4, 5, 6, 7, 8, 9, 12, 22, 65, 68, 73, 87, 88, 122, **256–258**, *258*, **323**, **352–354**
Stevenson, Robert L., 125
Storrow, James J., 52, **258**, **323**
Story, Joseph, 7, 10, 11, *12*, 13, 14, 15, 16, 17, 19, 21, 34, 56, 65, 70, 71, 73, 90, 91, 93, 94, 95, 122, 123, 173, 175, **258–263**, 288, **323–328**, **354–356**
Strobel, Edward H., *52*, 53, 54, **263–265**, *264*, 289, **328**, **360–361**
Sugden, Lord Chancellor 118
Sumner, Charles, 12, 13, 14, 15, 16, 70, 91, 126, **265–267**, **328**
Swayze, Francis J., 159, **267**, **328**
Sweetland, Justice, 151
Sweetman, John, 17
Swift, Henry W., 52, **267**, **328**

TABOR, E. O., 150
Taft, Hon. William H., 158
Tarbell, E. C., 124
Taylor, Marvin C., 149
Thayer, Ezra R., 34, 38, 52, 58, 59, *60*, 61, 62, 108, 113, 120, 124, 127, 149, 150, 156, 159, 160, **267–276**, 288, **328–329**, **363–364**
Thayer, Mrs. Ezra R., 62, 124
Thayer, James B., 30, 33, 34, *36*, 37, **38**, 39, *52*, 55, 63, 65, 66, 78, 79, 82, 124, 158, 165, *276*, **276–283**, 288, 289, **329–331**, **361**
Thomas, Benjamin F., 30, **283**, 331
Thompson, William G., 124, 150, **283**, **331**
Torrey, Henry W., 41, **283–284**

VINER, 9, 10
Vinogradoff, Paul G., 53, **284**, **331**
Vinton, Frederic P., 124, 157, 159

WADE, WINTHROP H., 154, 155
Walker, Anthony, 126
Wambaugh, Eugene, 36, 43, 52, 78, 79, 81, 82, 149, *172*, 289, **331–335**
Ware, Darwin E., 154
Warner, Joseph B., 41, 154, **284**
Warren, Edward H., 54, 149, *172*, 288, **335**
Warren, Joseph, 54, *172*, **335–336**
Washburn, Emory, 18, 19, 20, 21, 25, 27, 32, 33, 34, 65, 78, 123, 136, 154, 173, *284*, **284–286**, 288 **336–337**, **356–358**
Webber, President, 4
Webster, Daniel, 123, 126, 126
Welch, Joseph N., 147
Weld, William F., 39
Wesson, P. D., 149
Westengard, Jens Iverson, 54, *172*, 289, **337**
Weston, Robert D., 61, **286**, **338**
Wheaton, Henry, 123, 126
Wickersham, Hon. George W., 159
Wigmore, John H., 36, 42, 140, 165
Wild, Urban E., 151
Wilkes, John, 126
Williams, Frank B., 52, **286–287**
Williston, Samuel, 43, *52*, 58, 78, 79, 81, 124, 156, 160, *172*, 289, **338–341**, **364**
Wilson, James, 2
Woodruff, Edwin H., 83
Woodward, William R., 91, 92, 93, 94
Wyman, Bruce, 54, **287**, **341–343**
Wythe, George, 2

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